



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated March 9, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants and the Landlords attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. During the hearing, the Landlords were represented by their advocate, AS, and received assistance from their interpreter, YM.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of dispute resolution documents.

### Preliminary Matter – Correction of Landlord's Name

Based on the Landlords' evidence, I find that one of the Landlords' names has been misstated on this application. I have corrected the name of that Landlord accordingly.

### Issues to be Decided

1. Are the Tenants entitled to cancellation of the One Month Notice?
2. If the Tenants are unsuccessful, are the Landlords entitled to an Order of Possession?

3. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a basement suite in a house. The Tenants commenced their tenancy with their previous landlords on September 15, 2019. The Tenants initially paid monthly rent of \$1,600.00 including utilities. In May 2020, the monthly rent was increased to \$1,670.00.

The Landlords took possession of the property on May 11, 2021. The parties entered into a new tenancy agreement on the same day. Copies of both the current and previous tenancy agreements have been submitted into evidence.

*The Landlords' Evidence*

The Landlords say that they discovered six people were occupying the rental unit in February 2022, when their previous understanding had been that only a family of four was occupying the rental unit. The Landlords confirmed they served the Tenants with the One Month Notice in person on March 9, 2022.

A copy of the One Month Notice has been submitted into evidence. The stated reason for the One Month Notice is that the "Tenant has allowed an unreasonable number of occupants in the unit/site/property/park". The One Month Notice further provides the following details of cause (portions redacted for privacy):

*The tenants in the initial rental application with the previous Landlord, dated Aug 13, 2019, declared that they were a family of 4 people, the wife, husband & 2 kids named [SY] (14 yrs) & [SP] (9 yrs old). They signed a month to month tenancy agreement which started on Sep 15, 2019 for \$1600/m including utilities. Also, when renewing the same month to month agreement including utilities for 4 people with us (the new landlord) on May 11, 2021, they again declared that they were a family of 4 as before. At that time they verbally mentioned to us that their son named [SH] (23 yrs old) who was resided [abroad], would visit them for a few*

*days occasionally. And they specifically mentioned that he didn't and wouldn't live with them permanently. Also, they failed to even mention they had another child named [ST] (21 yrs old) the 4th kid living with them. We recently found out by different (sic) trusted sources including our observant they have been 6 people including 4 kids who have been living in the rental unit permanently from the beginning of the tenancy. We have also paid the cost of utilities for 6 people during this time.*

One of the Landlords, IM, testified that when the Landlords viewed the property in April 2021, they were told by the listing agent that a family of four people, two parents and two children, live in the basement suite. IM emphasized that the Landlords were never told by the sellers or listing agent that there had been six people living in the rental unit. The Landlords submitted a copy of the Tenants' initial rental application dated August 13, 2019, which lists the Tenants and their two minor children SY and SP as applicants.

IM testified that when the Landlords met with the Tenants to sign the new tenancy agreement on May 11, 2021 with the Landlords' realtor, one of the Tenants, SO, confirmed that there were still only four people living in the rental unit. IM testified that SO said she had another son that would visit and stay with them for a couple of days. IM testified that he only saw the Tenants and two of their children, who were sitting on the sofa watching television. The Landlords submitted written statements from IM and the Landlords' realtor in support.

IM testified that a family of five moved into the upper suite in November 2021. IM stated that the upstairs tenants pay the utilities for the whole house and are reimbursed by the Tenants for one third of the cost. IM testified he told the upstairs tenants that there were four people living in the rental unit below. IM stated he first suspected that there were more than four people living in the rental unit in January 2022 when he was told by the upstairs tenants that there were six people living in the rental unit.

IM testified he wanted to find out the truth, so he contacted the Tenants to arrange an inspection of the utility room in the rental unit on February 26, 2022. IM testified that during this visit, he asked the Tenants to increase the rent by \$80.00 per month. IM testified that SO said the increase should be 1.5%, not \$80.00. IM testified he told SO that she was right, but the tenancy agreement was based on four people living in the rental unit. IM testified that after his questioning and a long pause, SO admitted there were six people living in the rental unit. IM testified he told SO that was why he asked for the \$80.00 increase, and that the Tenants accepted his request. IM testified the

Tenants could not find their copy of the tenancy agreement, so they decided to draw up a new agreement later.

IM stated he later received advice that the Landlords could issue a one month notice to end tenancy in this situation. IM testified he requested the Tenants to provide their children's photo IDs so that there would be a written statement to prove six people were occupying the rental unit. The Landlords' evidence is that their sole intention for proposing the rent increase was to get the Tenants to admit that there were six people living in the rental unit, not to increase the rent. IM confirmed he received the children's names from SO.

IM testified he called insurance companies several times regarding the consequences of having six people living in the suite, and was told that there would not be any coverage in the event of an emergency such as a fire. IM testified the Landlords would be unable to bear the associated legal liability.

IM testified that discussing the issue with the Tenants did not seem possible due to what the Landlords view as the Tenants' dishonesty. IM stated that the parties' tenancy agreement addendum required the Tenants to provide proof of tenant insurance within 14 days of entering into the agreement, but the Tenants have not done so.

The Landlords seek an order that the One Month Notice be upheld and for an Order of Possession to be granted.

The Landlords propose that five factors be considered when deciding whether the Tenants have allowed an unreasonable number of occupants in the rental unit: (a) the size of the rental unit, (b) the Landlords' legitimate expectations, (c) clause 7 of the parties' tenancy agreement addendum, (d) burden on the property and other tenants, and (e) health and safety of the tenants under the British Columbia Building Code.

*a. Size of Rental Unit*

The Landlords argue that the rental unit only has one bathroom and two rooms usable as bedrooms. The Landlords submitted a floor plan of the rental unit into evidence. The floor plan shows that the rental unit includes three rooms each labeled as a "bedroom" and marked A, B, and C. The Landlords' advocate explained that rooms B and C have windows, but room A does not.

*b. The Landlords' Legitimate Expectations*

The Landlords argue that the Tenants had assured the Landlords there were only four occupants in the rental unit prior to entering into a new tenancy agreement with the Landlords. The Landlords referred to their realtor's written statement as corroborating evidence.

*c. Clause 7 of the Tenancy Agreement Addendum*

The Landlords submit that unless the Landlords agree in writing, only the occupants listed on the tenancy agreement may reside at the rental unit. The Landlords' advocate referred to Clause 7 under section 2 of the parties' tenancy agreement addendum, which states:

*The Tenant agrees that the occupant(s) as listed on the Residential Tenancy Agreement shall be the only resident occupant(s) of this suite (staying overnight more than two nights in any month) unless the Landlord agrees otherwise in writing. All facilities are for tenant use only. The tenant is not allowed to sublet the whole or part of the suite without Landlords' permission.*

The Landlords' advocate stated that while only the Tenants are listed on the agreement, the Landlords accept the Tenants' two minor children as occupants and not the Tenants' two adult children.

*d. Burden on Property and Other Tenants*

The Landlords argue that having more occupants means more wear and tear on the property. The Landlords submitted that their insurance does not protect from losses where there is an unreasonable number of occupants in the rental unit. The Landlords further submit that it is unfair for the tenants in the upper suite to cover two thirds of the shared utilities, when there are six instead of four people living in the rental unit.

*e. Health and Safety Under BC Building Code*

The Landlords argue that having three occupants per bedroom or sleeping in an unsuitable room as a bedroom poses significant risks to the Tenants' safety. The Landlords' advocate referred to section 9.9.10.1 of the 2018 British Columbia Building

Code, which requires each non-sprinklered bedroom to have at least one outside window or exterior door.

### *The Tenants' Evidence*

In response, the Tenants testified that the rental unit had been advertised as a 3-bedroom unit when they had applied to rent the place. The Tenants pointed out that the rental application identifies the unit as such. The Tenants testified that the rental unit is around 1,300 sq ft.

The Tenants testified that they share a bedroom, their daughter SY uses the room without the window, and their sons use the remaining bedroom.

The Tenants' evidence is that their adult sons moved into the rental unit in April 2020, and that the Tenants had agreed with their previous landlords to a \$70.00 increase in rent to cover the added cost of utilities. The Tenants' evidence is that they did not document this change in their previous tenancy agreement. The Tenants submitted airline booking confirmation documents as proof of their sons' return from out of province in April 2020.

The Tenants testified that one of their adult sons currently stay in the rental unit all the time, while the other adult son only comes to visit sometimes. The Tenants say that they consider the second adult son to be an occupant of the rental unit as well.

The Tenants pointed out that the Landlords' evidence is inconsistent because the Landlords' realtor names two of the Tenants' sons as the Tenants' underage children who were seen in the rental unit, while the Landlords say that they had seen the Tenants' underage son and daughter. The Tenants testified that if the Landlords had arrived at the appointed time of 5:30 pm for their first meeting, they would have been able to meet with all family members. The Tenants explained that by the time the Landlords arrived closer to 6:30 pm, their sons had left to play basketball.

The Tenants testified that when the Landlords came to visit, their daughter would be in her room, which the Landlords now say is not a bedroom, and the Landlords had never mentioned it was unsafe for her to use. The Tenants testified that that the house was built in 1991, and would have followed the existing building code at that time. The Tenants testified that the interior hallway can serve as a means of exit in an emergency.

The Tenants testified that during the meeting on February 26, 2022, the Landlords asked for a rent increase of \$80.00 to take effect on April 1, 2022. The Tenants testified that they reminded the Landlord only a 1.5% increase was allowed, to which IM responded that since there were six people, the Landlords could ask for more. SO testified she told IM that the Landlords already knew there were six people when they purchased the property. SO testified the Landlords also asked for the Tenants to cover one-third of the utilities and to do gardening under the kitchen. SO testified that at the end of the meeting, the Landlords were smiling and seemed pleased. The Tenants submitted text message correspondence following this meeting, in which IM states it was a pleasure to have the meeting and that the Landlords will contact the Tenants for another quick meeting to sign the new tenancy agreement. The correspondence indicates SO subsequently messaged IM about a 3-month written notice requirement for increasing the rent. Following this message, IM responds with a request for the Tenants' children's picture IDs.

The Tenants testified that when the Landlords requested a further meeting, they were expecting to receive a notice of rent increase, but instead received the One Month Notice. The Tenants testified they were shocked and that they had never tried to hide the fact that there were six people living in the suite. The Tenants testified that it felt like retaliation, and that if they had been able to find their tenancy agreement to sign the changes on the spot, they would not have to be dealing with this hearing.

The Tenants explained they called their former landlords after receiving the One Month Notice, and received confirmation that the Landlords had been informed of the six occupants in the rental unit. The Tenants submitted a letter from one of their former landlords, MJ, dated March 18, 2022 in support. MJ's letter states he decided to raise the Tenants' rent from \$1,600.00 to \$1,670.00 to cover extra utility costs when he agreed for the Tenants' two adult sons to stay in the rental unit. MJ's letter further states he had told the new owner there were six people living there.

The Tenants testified that they currently have tenant's insurance, including \$2 million of liability coverage, with a start date in March 2022 for the insurance policy. The Tenants acknowledged they did not provide the Landlords with a copy of their policy.

In reply, the Landlords argued that the former landlords had been hostile during the purchase and sale process, which calls into question the statement from MJ. The Landlords submitted screenshots of messages with their realtor, in which the Landlords

and their realtor discuss certain aggressive and threatening messages which are said to have been sent by MJ.

### Analysis

#### *1. Are the Tenants entitled to cancellation of the One Month Notice?*

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

#### **Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the One Month Notice is dated March 9, 2022 and has an effective date of April 30, 2022. I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

Based on the parties' evidence, I find the Tenants were served with the One Month Notice in accordance with section 88(a) of the Act on March 9, 2022.



Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until March 19, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on March 9, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

The standard of proof in this dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the Landlord has issued the One Month Notice to end the tenancy on the basis that the “Tenant has allowed an unreasonable number of occupants in the unit/site/property/park”.

Section 47(1)(c) of the Act states as follows:

**Landlord’s notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(c) there are an unreasonable number of occupants in a rental unit; [...]

When interpreting this section, it is important to keep in mind the context and purpose of the Act. In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 at para. 11, the Supreme Court of British Columbia held as follows:

[...] the Act is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the Act, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the Act seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group [...]

The Act does not specify what constitutes an unreasonable number of occupants in a rental unit. I note that depending on the relationship between the occupants, it is possible for the number of occupants in a rental unit to be reasonable in one situation and yet unreasonable in another.

For reasons that follow, I find the Landlords have not established on a balance of probabilities that there is an unreasonable number of occupants in the rental unit.

First, I do not find on the evidence that the rental unit is too small for a family of six. I accept the Tenants' testimony that the suite is approximately 1,300 sq ft. According to the floor plan and IM's written statement, room A (which does not have a window) is the same size as bedroom C (121 sq ft). Given the occupants' close relationship as immediate family members, including two parents and two minor children, I find the Tenants' current allocation of the rooms and sharing one bathroom to be tight but acceptable.

Second, other than the alleged verbal statements made on May 11, 2021 and February 26, 2022, which are denied by the Tenants, I am unable to find any evidence to suggest that the Tenants had attempted to mislead the Landlords about the number of occupants in the rental unit. To the extent that the Landlords did not receive proper disclosure from the sellers of the property and the listing agent, that is a potential claim against them separate from this present dispute.

In addition, I find there is a discrepancy between the children of the Tenants identified by the Landlords (one son and one daughter), and the children of the Tenants identified by the Landlords' realtor (two sons). Therefore, I give the Landlords' realtor's statement less weight as evidence to suggest that the Landlords only knew about the Tenants' minor son and daughter.

Furthermore, based on the text message correspondence submitted by the Tenants, I do not accept on a balance of probabilities the Landlords' claim that their sole intention for proposing the rent increase was to get the Tenants to admit that there were six people living in the rental unit.

I note the text message correspondence submitted by the Tenants shows the following sequence of exchanges:

- IM states it was their pleasure to have a meeting with the Tenants, and confirms that he will prepare the new tenancy agreement starting from April 1;

- SO initially thanks IM, but later responds saying she consulted with the tenancy board and that 3 months' written notice is required;
- IM does not respond to SO's comment but proceeds to ask SO to provide picture IDs for the Tenants' children.

Third, I do not find clause 7 under section 2 of the parties' tenancy agreement addendum to assist the Landlords in this case, because the tenancy agreement does not clearly list all approved occupants for the rental unit. I am satisfied that the Landlords were aware the Tenants had at least two children, whom the Landlords acknowledge as occupants, but these children were not listed as such in the agreement.

Fourth, the Landlords argue that there will be more wear and tear on the property. In my view, more wear and tear due to a greater number of occupants is to be expected and does not in itself mean that the number of occupants is unreasonable. Furthermore, it is not disputed that the Tenants' family of six has been living at the rental unit since around April 2020, and while the Landlords have had opportunities to inspect the rental unit, I do not find the Landlords to have put forth any evidence suggesting actual damage to the rental unit caused by an excessive number of occupants.

Regarding the Landlords' concerns about insurance, I note that the Landlords have not provided any extrinsic evidence such as a statement from an insurance broker. As the Tenants have testified that they were able to purchase tenants' insurance for the rental unit, I am not satisfied on a balance of probabilities, based on the available evidence, that the Landlords would not be able to obtain adequate insurance coverage in the circumstances or would face unreasonable legal liabilities.

Moreover, I do not find the allocation of utilities between the Tenants and their upstairs neighbours to be relevant for the purpose of determining whether there is an unreasonable number of occupants in the rental unit. In my view, it is possible for the number of occupants to be unreasonable even if the Tenants were paying for all of the utilities. I find this portion of the evidence speaks more to the fact that the Landlords say they had no prior knowledge of the six occupants in the rental unit, which may have led to this particular allocation in the utilities cost. However, I have already found above that there is insufficient evidence for me to conclude that the Tenants had attempted to mislead the Landlords about the number of people living at the rental unit.

Fifth, I am not satisfied on a balance of probabilities that there is a significant risk to safety caused by the Tenants' daughter using room A as a bedroom. I note that the

copy of the floor plan itself identifies room A as a “bedroom”. I also accept the Tenants’ undisputed testimony that the Landlords had seen their daughter in room A previously without raising any safety concerns.

Overall, I am not satisfied on the evidence presented that the Tenants have caused an unreasonable number of occupants to reside in the rental unit, warranting eviction under section 47(c) of the Act. Given the protective purpose of the Act, I do not find that displacing a family of six from their home is necessary or justified in this case.

I conclude that the Landlords have not established, on a balance of probabilities, the grounds for ending the tenancy as stated in the One Month Notice.

Accordingly, I order that the One Month Notice be cancelled and of no force or effect.

*2. Are the Landlords entitled to an Order of Possession?*

Section 55(1) of the Act states:

**Order of possession for the landlord**

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord’s notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant’s application or upholds the landlord’s notice.

As the Tenants have been successful in cancelling the One Month Notice, I conclude that the Landlords are not entitled to an Order of Possession under section 55(1) of the Act.

*3. Are the Tenants entitled to recover the filing fee?*

The Tenants have been successful in cancelling the One Month Notice. I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlords for the month of August 2022.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The Tenants are authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlords for the month of August 2022.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 28, 2022

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Residential Tenancy Branch