



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1193652 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenants: CNC, FFT  
Landlord: OPC, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

The tenants applied on April 25, 2022 for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated April 11, 2022 (the One Month Notice); and
- the filing fee.

The landlord applied on April 28, 2022 for:

- an order of possession, having issued the One Month Notice; and
- the filing fee.

The hearing was attended by the landlord's counsel, the building manager (DC), tenant RT, and tenant JT, who is RT's son. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other's respective materials.

### Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Are the tenants entitled to recover the filing fee?
- 4) Is the landlord entitled to recover the filing fee?

## Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Those present agreed on the following particulars of the tenancy. It began November 14, 2011; rent is \$878.00, due on the first of the month; and the tenants paid a security deposit of \$400.00, which the landlord still holds. A new landlord purchased the multi-unit building in May 2019. The subject address is a two-bedroom unit.

In a May 20, 2022 letter to the landlord's counsel, submitted as evidence, tenant RT states that his primary residence is a location other than the rental unit, and that the rental unit is his secondary residence.

A copy of the One Month Notice was submitted as evidence. Landlord's counsel testified the One Month's Notice was served on the tenants on April 13, 2022 by registered mail to both tenant RT's primary residence, and to the rental unit. Tenant RT testified he received the Notice on April 24, 2022.

The One Month Notice is signed and dated April 11, 2022 by the landlord, gives the address of the rental unit, states the effective date of May 31, 2022, states the reasons for ending the tenancy, and is in the approved form.

The One Month Notice indicates the reasons for the Notice are:

- the tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- the tenants assigned or sublet the rental unit without the landlord's written consent.

The Details of the Events section of the One Month Notice states:

The tenant has sublet or assigned her tenancy to new occupants without the landlord's consent. Despite being given a reasonable opportunity to cure the breach by removing the occupants, the tenant has failed to do so. This is a breach of the tenant's statutory obligation not to sublet or assign a tenancy without landlord consent, and it is also a contractual breach of a material term of her tenancy agreement. The landlord is entitled to an order of possession.

Landlord's counsel indicated that the use of female pronouns was an error.

Section 9 of the tenancy agreement submitted by the landlord states:

- 9) The caretaker will, if necessary, maintain a schedule for the laundry room and the tenant will conform to the same. Each tenant is responsible for cleaning the machines and laundry room after each use.

Section 7 of the tenancy agreement states: "The tenant will not sublet without the permission of the owner."

The tenancy agreement is not on the [#RTB-1 form](#), and does not include the required standard terms as found in the Schedule of the [Residential Tenancy Regulation](#).

The building manager (DC) testified that he had noticed others with keys to the rental unit, and submitted that in March of 2022, another tenant from the property told him that a female (J) told them she was living in the subject rental unit.

The landlord submitted as evidence a letter to the tenants, dated March 22, 2022, which states that the landlord has learned that neither of the tenants reside at the rental unit, have not for "a very long time," and states that the tenants have either sublet or assigned the unit without the landlord's permission. The letter demands that the tenants either give notice to end the tenancy, or have the unauthorized occupants leave the unit by April 8, 2022, or the landlord will serve notice to end the tenancy for cause. The letter requests a March 28, 2022 response.

The building manager (DC) testified that during an April 7, 2022 inspection to check work done to the deck, he found the female, J, in the rental unit, along with two other people who were not the tenants. DC testified that J said she lives there by herself. DC testified that he and J talked about the deck, about the condition of the unit, about "her being a tenant there," and that she said she pays tenant RT \$600.00 a month and collects the mail, and that tenant RT comes once a month for the mail.

Submitted as evidence is a video in which at times a female can be seen and heard, along with several other people. DC testified that he is in the video, and that it was recorded on April 7, 2022. Counsel stated it is DC speaking in the video. In the recording, which is a minute and a half long, DC is speaking to the female about the condition of the unit. He can be heard referring multiple times to "you guys," as in: "The last thing you guys want is a fire ...," "... the state you guys have [the unit] in," and "... the landlord comes and inspects, and tells you guys to ..." He also refers to the people he is speaking of potentially stating, if there were a fire: "We lost our home ..." A male

with DC asks the female: "You said you are paying [tenant RT] \$600.00 a month?" and she replies: "Yes." DC then asks: "Are you getting your mail here?" to which she replies: "Not yet." The recording does not include J stating that she lives alone in the rental unit.

Counsel for the landlord asked JT if he agrees with J's April 7 statement that she lives alone; JT stated that he lives there, and would disagree with the statement.

Counsel submitted that in the recording, J does not mention being in a relationship with tenant JT, and that is something the tenants brought up only after being served with the One Month Notice.

RT submitted that the conversation in the video is only a portion of a longer exchange. He submitted that it does not show people talking, the audio does not seem to match the video, and that he questions the authenticity of the video. Counsel submitted that the tenants have provided no evidence to support that the video is not authentic.

DC testified that following that inspection, the landlord arranged for the One Month Notice to be served on the tenants.

DC testified that on May 31, 2022, there was a moving truck at the property, and the movers said they were there for the subject rental unit. DC testified that the female, J, said she was taking items to storage, not moving out. JT testified that J had been moving out surplus items he had given her.

Submitted as evidence by the tenants is an affidavit dated August 4, 2022, from another tenant who lives in the building, RL. RL states that he has known the tenants for over 10 years, that they have been living in the unit since RL met them, that he often sees tenant JT around the building, and that tenant RT is often in town for about a week, and that RL sees RT's vehicle in the parking lot, and chats with RT if they see each other.

Building manager DC submitted that RL does not have a good relationship with the landlord, and seeks to discredit the landlord on social media, acting as if he is a building manager.

Landlord's counsel submitted that the landlord's agents have not seen tenant RT at the building for some time, and that the tenants have provided no proof that JT lives in the rental unit, other than RL's affidavit.

Tenant RT testified that the tenants are not subletting the unit, and that tenant JT lives in the rental full time. RT submitted that his primary residence is elsewhere, but as his work obligations require him to be in town 5 days a month, he occupies the rental unit during that time.

RT submitted that the landlord purchased the building in May 2019, and RT queried how the landlord's agents would know whether the tenants lived in the unit, as the agents have only communicated with the tenants in writing. RT testified he has never met building manager DC, and spoke with the property manager for the first time in August 2022, after her being in the role for a year and a half.

RT testified that the landlord had fought a bylaw preventing renovations, but lost in Supreme Court. RT submitted that the landlord had intended to renovate the whole building, but was unable to do so, and as a result the landlord is "not happy" with any of the tenants, and has been making life difficult.

RT testified that in July 2022, for the first time in two years, the landlord has begun renting out units in the building for \$2,250.00 a month, and submitted an advertisement for a two-bedroom unit as evidence. RT submitted that as he pays \$878.00 for a two-bedroom unit as he has lived there for 10 years, and that the landlord is seeking to evict them to charge much more for the unit.

JT testified that he works 12 hours a night, 5 days a week, and that 9 times out of 10 he is working from home. RT submitted this might be why the landlord's agents don't see JT at the property. A copy of JT's timesheet is submitted as evidence.

JT testified that the female, J, was his girlfriend at the time in question, and would visit 3 to 4 times a week, sometimes spending the night. JT testified his relationship with J ended at the beginning of May 2022.

JT testified that he was not at the rental unit for the April 7 inspection as he went to stay at his mother's home in the neighbouring municipality, so that his sleep would not be disturbed. JT testified he had the understanding that the landlord's agents would need to check the work on the window in his bedroom during the inspection.

JT testified that as he has expensive musical equipment in the rental unit, he asked his girlfriend, J, to be in the rental unit for the inspection. RT confirmed that they asked J to let people in on the day of the inspection.

Landlord's counsel confirmed that JT had seen the video, and asked JT why he thought that J had told building manager DC that she pays RT \$600.00 a month. JT said he did not know, as he is the one who pays RT the \$600.00 a month, that J did not, and that perhaps J had been speaking on his behalf. JT testified he did not hear J say in the video that she pays rent to RT.

JT testified that when he moved back into the apartment with his belongings, it was fully furnished, which resulted in them having too much stuff. JT testified that J used the moving truck on May 31, 2022 to take items he had given her. He testified he had not got rid of the excess items earlier, having moved in in February, as he had been busy, and he needed to make decisions about what to keep, as did J.

### Analysis

Section 34(1) of the Act states:

#### **Assignment and subletting**

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Based on the testimony of those present, I find the landlord served the tenants the One Month Notice on April 13, 2022 by registered mail, in accordance with section 88 of the Act, and deem it received on April 18, 2022, pursuant to section 90 of the Act.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form.

As the One Month Notice was received by the tenants on April 18, 2022, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: April 28, 2022. As the tenants applied to dispute the One Month Notice on April 25, 2022, I find they applied within the deadline.

Section 47(1)(h) and (i) of the Act state that a landlord may give notice to end the tenancy if:

- 47(1)(h) the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so; and

- 47(1)(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*.

I find the two reasons indicated on the One Month Notice are the same, as the breach clearly intended by the landlord in the Details of the Events section is that the tenants have allegedly assigned or sublet the rental unit without the landlord's written consent.

Rule 6.6 of the Rules of Procedure states:

The standard of proof in a 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove that the tenants have assigned or sublet the rental unit without the landlord's written consent.

[Residential Tenancy Policy Guideline](#) 19. *Assignment and Sublet* states that "assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord." This would require the agreement of the original landlord.

As neither party in the dispute has provided evidence to suggest that the tenants, a third party, and the landlord have agreed to transfer the tenants' rights to a third party, I find the tenants have not assigned the unit without the landlord's written consent.

Considering whether the tenants have sublet the rental unit without the landlord's written consent, Guideline 19 states that when a rental unit is sublet, the original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit, granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

Therefore, I must determine whether the tenants moved out of the rental unit, granting exclusive occupancy to a sub-tenant.

Tenant RT testified that the rental is his secondary residence, as his primary residence is elsewhere, but that as his work requires him to be in the city 5 days a month, on those days he stays at the rental unit.

Tenant JT testified that he moved back into the rental unit in February 2022; that he lives there full time; that he works 12-hour night shifts 5 days a week, usually from home; and that his girlfriend at the time (J), would visit the rental unit several times a week, sometimes staying overnight. JT testified he pays RT \$600.00 a month in rent.

The tenants have submitted as evidence an affidavit from a person (RL) who lives in the building, whom the building manager submitted seeks to discredit the landlord on social media. RL's submission states that the tenants live in the building, and that RL sees them regularly.

The building manager has provided affirmed testimony that during an April 2022 inspection, part of which was videorecorded, a female (J), stated that she lives in the rental unit alone and pays tenant RT \$600.00 a month. In the recording, J can be heard stating that she pays RT \$600.00 a month and is "not yet" receiving her mail at the rental unit, but the recording does not include J stating she lives alone in the unit.

In the video, the building manager repeatedly refers to "you guys," when referencing those living in the unit, rather than using the singular "you" one would use if speaking to a single person living alone in the unit.

Tenant RT submitted that the landlord has been "making life difficult" for tenants in the building as he was unsuccessful fighting a bylaw preventing him from evicting tenants to renovate the entire building. RT submitted that the landlord seeks to evict he and JT so that he can charge a much higher rent.

The tenants have provided convincing evidence: both of their affirmed testimony that they reside in the rental unit; the affidavit stating they live in the unit; the observation that the recording is a part of a longer, unheard conversation; and explaining why the landlord may not be acting in good faith.

However, in the video J can be heard stating that she pays rent to RT and that she is "not yet" receiving her mail there. JT submitted that J may have been speaking on his behalf regarding the payment of rent. I will not evict tenants based on this 90-second video clip without the context provided by the rest of the conversation, particularly given that the tenants have suggested the landlord is not acting in good faith, and that while



the landlord's position is that J lived alone in the unit, in the video the building manager repeatedly refers to multiple persons living in the unit.

Considering the preceding evidence before me, and on a balance of probabilities, I find the landlord has failed to demonstrate that the tenants moved out, granting a third party with exclusive occupancy of the rental unit, as "subletting" is described in section C of Guideline 19.

As I find the landlord has failed to prove the tenants assigned or sublet the rental unit without the landlord's written consent, the landlord has failed to prove the reasons for the One Month Notice.

Therefore, the landlord is not entitled to an order of possession.

The One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

As the landlord is unsuccessful in his application, I decline to award him the filing fee.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The landlord's application is dismissed.

The tenants' application is granted. The tenancy will continue until it is ended in accordance with the Act.

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: September 20, 2022

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Residential Tenancy Branch