



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, DRI

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 17, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated August 16, 2022 (the "One Month Notice");
- to dispute a rent increase; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt relating to their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the Act.

During the hearing, the Landlord's Agent referred to evidence that was provided to the Residential Tenancy Branch on October 3, 2022, only one day before the hearing. The Landlord's Agent confirmed that this evidence was not provided to the Tenant.

### Preliminary and Procedural Matters

With respect to the service of Landlord's late evidence, the Rule of Procedure 3.15 states; Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent intends to rely on

at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing.**

3.17 Consideration of new and relevant evidence; evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

During the hearing, the Landlord's Agent referred to the late evidence consisting of an email from the Strata outlining their concerns relating to the Tenant's subleasing of bedrooms dated October 3, 2022, as well as a previous tenancy agreement dated February 16, 2021. I find through reasonable planning and due diligence, this evidence could have been obtained by the Landlord prior to the evidence submission deadlines and served to the Tenant in accordance with the Rules of Procedures. I find that the evidence is late and not new. As such, the evidence provided by the Landlord to the Residential Tenancy Branch on October 3, 2022 will not be considered in this decision.

Regarding the Tenant's Application, The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice. The Tenant's request to dispute a rent increase is dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 1, 2020. The Tenant currently pays rent in the amount of \$2,700.00 each month to the Landlord which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified that the Tenant has an unreasonable number of occupants residing in the rental unit. The parties agreed that the Tenant took over the leave from a previous tenant in November 2020. The Tenant stated that at the time, there were four people residing in the two-bedroom unit. The Tenant stated that she was under the impression that this was permitted.

The Landlord's Agent stated that they conducted an inspection of the rental unit on February 7, 2022 at which point it was found that the two bedroom rental unit had been

converted into a four bedroom unit, which had a bed in each of the two bedrooms, as well as a bed in the living room and dining room.

The Landlord's Agent stated that she contacted the Tenant to caution them about the additional occupants. During the hearing, the parties agreed that the Tenant was permitted 3 persons including herself in the rental unit. The Landlord was of the impression that there were four in the unit during the February 7, 2022 inspection.

The Tenant stated that the fourth occupant vacated the rental unit in June 2022. The Landlord's Agent stated that they conducted another inspection of the rental unit on August 15, 2022 during which the Landlord's Agent found three beds in the rental unit. The Tenant stated that the third bed is in the living room and was left there from the previous tenant that vacated in June 2022. The Tenant stated that the remaining three occupants use the mattress to sit on while watching movies.

During the hearing, the Landlord's Agent confirmed that she was of the impression that there were three persons residing in the rental unit as of the inspection conducted on August 15, 2022. The Tenant confirmed the same.

The Landlord's Agent stated that she subsequently served the Tenant with the One Month Notice on August 16, 2022 with an effective vacancy date of September 30, 2022. The Landlord's reason for ending the tenancy on the One Month Notice is;

*"The Tenant has allowed an unreasonable amount of occupants in the unit"*

The Tenant stated that the Landlord's Agent had emailed her on June 14, 2022 requesting to increase the Tenant's rent from \$2,700.00 to \$3,300.00. The Tenant stated that she refused to pay the increase which was above the allowable amount. The Tenant stated that the Landlord has served the One Month Notice in bad faith as she refused to pay the proposed rent increase.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with the One Month Notice on August 16, 2022 with an effective vacancy date of September 30, 2022. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord is seeking to end the tenancy based on the Tenant having an unreasonable number of occupants residing in the rental unit. I accept that at the start of the tenancy in November 2020, the Landlord permitted the Tenant to have three persons residing in the rental unit. I accept that during the February 7, 2022 inspection of the rental unit, the Landlord's Agent was concerned that there may have been four persons residing in the rental unit.

I accept that the Tenant confirmed that the fourth occupant moved out in June 2022, which can be confirmed by the Landlord's Agent's findings during the August 15, 2022 inspection where the Landlord's Agent found only three beds. I find that the Landlord has provided insufficient evidence that the Tenant as of August 16, 2022 was in breach of the previously permitted three occupants in the rental unit.

Instead, I find that the Landlord on June 14, 2022 seemed more concerned about increasing the Tenant's rent above the allowable limit, rather than following up regarding the Tenant's number of occupants in the rental unit. I accept that the Tenant refused to pay the amount being sought by the Landlord, which in turn, resulted in the Landlord seeking to end the tenancy a couple months later. I find this demonstrates that the Landlord served the One Month Notice in bad faith.

In light of the above, I cancel the One Month Notice, dated August 16, 2022. I order the tenancy to continue until ended in accordance with the *Act*. As the Tenant was successful with their Application, I find that they entitled to the return of the filing fee and may deduct \$100.00 from one (1) future rent payment.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated August 16, 2022 is cancelled. The tenancy will continue until ended in

accordance with the *Act*. The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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: October 04, 2022

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Residential Tenancy Branch