



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC**

### **Introduction**

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for cancellation of a One Month for Cause dated August 31, 2022 pursuant to sections 47.

The Landlord's agents ("TD" and "SP") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### **Preliminary Matter – Service of NDRP and Tenant's Evidence on Landlord**

The Tenant stated she did not serve the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord because she was in a hospital in Toronto and did not return to British Columbia until October 4, 2022. SP stated the Landlord was not served with the NDRP. TD stated the Landlord was not aware the Tenant made the Application until the Landlord received an email on October 10, 2022 from the Residential Tenancy Branch ("RTB") that advised the deadline for submitting evidence for this proceeding was approaching.

#### **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

The Tenant stated she did not serve NDRP on the Landlord and TD stated the Landlord was not served with a copy of the NDRP. As such, the Tenant did not comply with requirements of Rule 3.1. Based on the foregoing, I dismiss the Application.

### Issue

- As the Application has been dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

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

The parties agreed the tenancy commenced on December 1, 2021, for a fixed term ending November 30, 2022, with rent of \$1,800.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$900.00 and a pet damage deposit of \$900.00 by November 29, 2021. TD stated the Landlord received the deposits and that the deposits were to be held by the Landlord in trust for the Tenant.

TD stated the 1 Month Notice was served through the Tenant's mail slot on August 31, 2022. The Tenant admitted she was given the 1 Month Notice by the occupants of the rental unit and she then made the Application.

The 1 Month Notice states the cause for ending the tenancy was the Tenant assigned or sublet the rental unit without landlord's written consent. The details provided in the 1 Month Notice for the cause was the "Tenant has subleased unit without written consent from Landlord".

TD stated the Tenant sought the consent of the Landlord on May 28, 2022. TD stated the Landlord refused to give consent because the Tenant had rental arrears of \$3,250.00.

The Tenant admitted she sublet the rental unit commencing on April 1, 2022 because she had been in and out of hospital most of the time. The Tenant stated the Landlord would not accept an e-mail transfer for the rent. The Tenant stated she had to make arrangements with a friend for payment of rent to the Landlord. TD stated email transfer were not a method permitted by the Landlord for payment of rent.

### Analysis

Subsection 47(1)(i) and sections 47(2) through 47(5) of the Act state:

- 47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:  
[...]
- (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]*; [...]
- (2) A notice under this section must end the tenancy effective on a date that is
- (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.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

TD stated the 1 Month Notice was served in the Tenant's mail slot on August 31, 2022. The Tenant admitted she received the 1 Month Notice from the occupants of her rental unit. Pursuant to section 47(4) of the Act, I find the Tenant had until September 12, 2022, being the first business day after expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Tenant made the Application on September 6, 2022. As such, the Tenant made the Application within the 10-day dispute period permitted by section 47(4) of the Act. However, as noted above, the Tenant did not serve the NDRP for the Application on the Landlord as required by Rule 3.12 and, as a result, I have dismissed the Application. I must now determine if the Landlord is entitled to an Order of Possession based on the 1 Month Notice.

TD stated the Tenant sublet the rental unit without the written consent of the Landlord. TD stated that, although the Tenant made a request for consent to sublet the rental unit, the Tenant had rental arrears of \$3,250.00 at the time of the Tenant's request. As a result of the rental arrears, the Landlord refused to give the Tenant consent even though there remained more than 6 months on the fixed term of the tenancy. The Tenant admitted she sublet the rental unit on April 1, 2022, being almost two months prior to her request to the Landlord for consent to sublet her rental unit.

Section 34 of the Act states:

- 34(1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.
- (2) If a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).
- (3) A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease under this section.

I find the Tenant sublet the rental unit prior to requesting the Landlord for consent to sublet the unit. As such, I find the Tenant sublet the rental unit without obtaining the prior written consent of the Landlord. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenant was in breach of subsection 47(1)(i) of the Act as she did not have the prior consent of the Landlord to subletting her rental unit at the time the subtenants moved into the unit on April 1, 2022. As such, I find the 1 Month Notice was issued for a valid cause. Furthermore, had the Tenant not sublet the rental unit prior to her request of May 28, 2022 for consent from the Landlord to sublet the rental unit, I find it was not unreasonable for the Landlord to refuse to give written consent to the Tenant subletting her rental unit on the basis the Tenant had rental arrears of \$3,250.00 at the time of the Tenant's request for consent on May 28, 2022.

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.

I have dismissed the Application. I have reviewed the 1 Month Notice and find it complies with the requirements of section 52 of the Act. Pursuant to section 55(1) of the Act, I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord.

Conclusion

The Application is dismissed.

I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order of Possession by the Landlord. The Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 27, 2022

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Residential Tenancy Branch