



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) A.B.	910074942	CNC-MT, OLC, RP, LRE, PSF
(Landlord) I.R.	310076468	OPL, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed claims for:

- more time to apply to cancel an eviction notice;
- an Order cancelling a One Month Notice to End Tenancy for Cause dated May 30, 2022 ("One Month Notice");
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- suspending or restricting the Landlord's right to enter; and
- an order for services or facilities required by the tenancy agreement or law.

The Landlord filed claims for:

- an Order of Possession for Cause, based on the One Month Notice; and
- recovery of the \$100.00 application filing fee.

The Tenant, the Landlord, counsel for the Landlord, H.F. ("Counsel"), and two agents for the Landlord, N.R. and M.M. ("Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for Tenant, C.L., was also present and provided affirmed testimony.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

However, during the course of the hearing, Counsel referred to photographs and videos, which the Tenant said she did not receive. Counsel asked [M.M.] to address this matter, as [M.M.] said that she served the Landlord’s documents and USB to the Tenant on October 8, 2022. I am aware that [M.M.] is in the business of assisting parties involved in residential tenancy disputes. I asked [M.M.] if she was sure that she served the Tenant with the USB, and she said she checked the contents of the evidence package twice before sealing and serving it. The Landlord also submitted a copy of [M.M.’s.] proof of service, which states that [M.M.] served the Tenant with the Landlord’s evidence package in front of a witness, [G.S.] by attaching a copy to the rental unit door on October 8, 2022. Along with the Proof of Service was a photograph of a USB with the words “USB in evidence package” written on the photograph.

When I consider the evidence before me overall in this matter, I find it is more likely than not that [M.M.] served the Tenant with the Landlord’s evidence package, including the USB. I find it consistent with common sense and ordinary human experience that, if the Tenant was not expecting a USB to be contained in the envelope, that it could easily have fallen out or been misplaced while removing the documents. As such, I find on a balance of probabilities that the Tenant was properly served with all of the Landlord’s evidence; as such, I will consider the Landlord’s evidence contained in the USB in making my decision.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I told the Parties that not all the claims on the Application are sufficiently related to be determined during this proceeding, and that I would only consider the Tenant's request to set aside the One Month Notice at this proceeding. I said therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

The Tenant also applied for more time to apply to dispute the One Month Notice; however, I found that the Tenant had, in fact, served the Landlord with her Notice of Hearing, Application, and evidence on time; therefore, this claim is unnecessary and is dismissed without leave to reapply.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began approximately 8 or 9 years ago, but they could not remember exactly when, with a current monthly rent of \$867.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a

security deposit of \$400.00, and a \$100.00 pet damage deposit. The Landlord confirmed that she still holds the deposits in full.

The Landlord submitted a copy of the One Month Notice, which was signed and dated May 30, 2022, and which has the rental unit address. The One Month Notice was served in person on May 30, 2022, with an effective vacancy date of June 30, 2022. The One Month Notice was served on the grounds that the Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the Landlord's property at significant risk; and
- assigned or sublet the rental unit/property without the landlord's written consent.

Counsel explained the Landlord's reason for evicting the Tenant, as follows:

Primarily, the Tenant allowed [C.L.] to move into the unit for over five months without letting the Landlord know this was occurring. The Landlord was made aware by the upstairs tenant [*she later corrected this to the next door tenant*] that there is a random person downstairs. The Landlord called the RCMP, as she didn't realize it was [C.L.] the first time they called RCMP.

There was no communication with the Landlord, or reason why this person was in the unit. In the evidence of the Landlord there's a video of [C.L.] moving in with her two dogs and quite an amount of her belongings. This goes against the claim that this was simply a house sitting – it was for an extended period of time. [C.L.] remained in the unit for over five months with dogs, and she caused significant disturbance to the [next door] tenant from the dogs – altercations between her dogs and the dogs [next door] - that's why the notice was served.

In Landlord's package there's a letter from the [next door] tenant regarding his interactions with [C.L.] on page 11, and - it is a letter from next door tenant, not upstairs tenant.

The Tenant said:

I wasn't there, so I didn't know what was happening. You'll have to talk to [[L.],

the next door tenant]] and [C.L.]

Counsel referred me to emails in the Landlord's evidence from other tenants. The Agent, N.R., commented on how she became aware of [C.L.] living in the rental unit. She said: "I received email from [L.]; he sent a letter by email, and I forwarded it to [the Agent, [M.M.]]."

[M.M.] said: "I can confirm, I phoned [L.] after receiving all the emails and asked him to stay – he wanted to move, because of the situation with [the Tenant's] unit."

The Landlord submitted a copy of a letter they received from the next door neighbour, [L.]. In this letter, [L.] said:

To [Landlords],

We're writing in complaint of [C.], who is squatting next door and refusing to leave. When she first arrived with her two dogs in May, she told us that she planned on staying until she got kicked out, and when we told her that she needed to talk to the landlord as this needs to be approved, but she got confrontational and has been so ever since. Please see the issues we are having below:

We are afraid for our dogs safety and our own safety.

We once arrived home with both of our dogs on leash, and her unleashed dog ran up and attacked one of our dogs. After we broke up the fight, she and her friends stood there and argued with us that her dog was on a leash, which he clearly wasn't if he's free to attack ours. We've told her several times that her dogs need to be leashed when out in the yard, as it's a shared space, but we now have had several instances when the large dog has come to our door barking and growling to confront our dogs, since the incident when he attacked our dog - most recently, yesterday, August 5th. We have come to the point where we will only let our dogs out on leash for short periods when we are supervising, in case she decides to let her dogs outside.

She and her friends are confrontational to the point that we no longer use our outdoor area. There have been so many instances when [C.] and/or her friends have come up to us when we are sitting outside and has been confrontational. She often has her friends over and she uses these times to confront us, which feels as if they are ganging up on us.

She has also said racist and unpleasant remarks about the Landlord and has made us feel extremely uncomfortable to the point that we no longer sit outside to avoid encounters with her or her friends.

She's not cleaning up her dog poop, meaning every time we want to mow the lawn we have to go and clean up after her dogs.

We kept a shovel in the yard which has gone missing since she has arrived. We have a lot of items stored outside and have had to set up a camera when we are out in fear that she will take more items.

We love living here mainly because of the beautiful outdoor space. It's unfair to tenants who pay to live here that she has illegally moved in next door and has made us feel so uncomfortable and afraid for our dogs that we no longer use our outdoor area – the fact that it's for the entire summer makes it even worse. We understand that you are doing what you can to correct the situation, but we had to write to let you know how unhappy we are with her presence.

Best regards,
[L. & S. (next door tenants)] .
[emphasis in original]

Counsel continued:

This prompted the Landlord to serve the One Month Notice. The other tenant indicated that he might need to move out, because of the issues with the sublease or the person allowed to live there for five months by [the Tenant]. That's why we served it – continued issues and possible liabilities they were incurring – a loss of quiet enjoyment of [the other tenant's unit]. There were situations where problems have arisen

The Tenant's Witness, [C.L.], then joined the teleconference hearing and Counsel asked her the following questions:

When did you first move into the unit?

I can't remember exact date - the 16th or 17th of May.

How long did you remain in the unit?

I was there until June 16, when I had a heart attack. I came back from hospital, and had agreed to house sit. It was probably in July - my memory is bad, because I had open heart surgery.

You resided there?

I was there to house sit while [the Tenant] was on an extended leave to take care of her Mom. I had lived in that property from 2017 – 2019.

But you weren't a tenant there. You had no contract with the Landlord?

No, I didn't. My agreement was with [the Tenant] to house sit.

Yes, I remained there other than when I had the heart attack in July.

When [the Tenant] returned, I stayed with her one week further, and helped her re-settle. Her house has been challenged, so that's why I was there as her friend

Do you remember a conversation with the tenant [L.]?

When I called him, he asked me what I was doing there. I said I was there for [the Tenant]. He was very rude to me, but that's okay.

You had no other accommodation at this time?

I had just rented a place in [another town] after I left there. Now I'm at [current address].

But the new tenancy was from when you left [the Tenant's]?

I had rented it before – I had agreed to be the tenant there, but it wasn't quite ready yet. Minor fixups were being done to prepare for my arrival.

When was your tenancy to start?

May before – I paid rent there, while living at [the Tenant's]. I never paid rent at [the Tenant's]; I was paying rent at the new location in [another town].

When was the tenancy in the new home started?

I talked to people re the unit from four days after I arrived at [the Tenant's]. I moved some things there, but I wasn't there until after I left [the Tenant's].

When was your first rent payment there?

To make sure, it was sometime around June 15.

When Counsel was finished, I asked the Tenant if she had any questions for her Witness, and she said she did not, that everything was in the letter in her evidence.

Counsel then stated the following:

Initially, the basis for the One Month Notice – as far as Landlord was concerned - was because there was a sublessee who was allowed [to live there] without the written consent from the Landlord per section 34 of the Act. [The Tenant] didn't notify [the Landlord] of her leaving, and [C.L.] did remain in the unit for at least a month without alternate accommodation. She moved in May 16, and paid rent at her new place on June 15. She stayed in the unit until mid-September, as far as Landlord was aware. She was there the entire time, except when she was in hospital.

The Tenant allowed her to remain in the unit for 4½ months, and didn't notify the Landlord of [C.L.] being in the unit. So, the Landlord - given the length of time – and that she moved in personal property. See that video of her moving in. She had friends over, so clearly, she was living there throughout this time, and it was her only accommodation with her two dogs, and her.

The Witness stated:

I was there to house sit. I was treated very badly by the man in the next unit – it had a lot to do with my having a heart attack. The Landlord said I had 24 hours to leave, and she called the RCMP the same day after I arrived. The RCMP came to the door and [the Landlord] said someone had broken in. I said I had a key, and I talked to [the Landlord]. [The Landlord] claimed she didn't know me.

Counsel went on to indicate other causes of the eviction, including mice infestation. She said the Landlord had arranged numerous attendances by pest control companies, and the Tenant was advised to remove the bird feed [as she had a pet bird inside the unit].

The Agent, N.R., said:

We had pest control there six times, and as far as I'm concerned, a week after [the Tenant] showed up, you can hear the mice. The tenant upstairs could hear the mice, and had to call the Landlord. This was a significant interference with tenants, and it was jeopardizing the property. In conclusion, the notice was

properly served re both sections checked off.

The Tenant replied:

[The Landlord] never contacted me at all regarding me being against [the Act] that someone has to inform her. I've sent pictures of the state of my place, and it's not a mess. The bird seed doesn't get left out; I put it away every night in an air tight container.

Nothing is being blocked, there are no mice droppings, and I don't hear them. [L.'s] complaints came well after the Notice was served to me. I didn't sublet to [C.L.], she was paying rent [elsewhere] – just not two weeks she wasn't paying rent.

I thought I was doing the responsible thing – making sure traps were set, but very few mice were left after I left. Pest control came over one time when I was sick. And they said because of Covid they wouldn't come in. I asked why there were so many mice, and they said [the Landlord's] garage is infested, and that mice were coming in through a dryer vent, so I put a screen over it. I don't know if it's still there or not.

[The One Month Notice] says I'm verbally abusive to the Landlord, and it said I'm leaving the unit in sanitary conditions (they probably meant "unsanitary"), but that's not correct. There are no bird feces on my floor. It was in disarray, because I have been very ill; I have to pace myself and find droppings, move everything, but sometimes I didn't have the energy to get things back right away.

The dogs are little and no one complained to me about [C.L.]. I thought I was doing the right thing to have someone in my place, and she knew [C.L.].

I didn't leave food outside the unit. As far as I am aware, she moved in some of her musical instruments – a flute and a drum – a ceremonial drum.

If there was mice in there, I didn't want them living in my place.

Counsel responded:

I'd like to clarify two things. The Landlord wasn't saying that the Tenant was the disturbance - it was the person she permitted into the unit. It was about [C.L.]

And I'd like my client to speak about communications regarding [C.L.].

The Agent [N.R.] said:

When we received a complaint from [L.], we talked to [C.L.] asking her to cooperate and not fight, and to share the yard for the dogs. I knocked on her door several times. She never answered. I called [the Tenant] about [C.L.] not cooperating and complained about [C.L.'s] friend, who parked in our driveway. I talked to her about that complaint.

Counsel asked the Agent: "Did you have direct communication with [the Tenant] regarding the disturbances?" The Agent responded:

Yes, I did. I talked to her once and then we talked to [the Agent, M.M.]. The Landlord was advised by [M.M.] that they would be handling it. However, the disturbance continued after that phone call with [the Tenant].

Counsel then asked the Agent, [N.R.], to comment on the mice situation. The Agent said:

[The Tenant] said they were coming from our garage; that is not true. They all were coming into our house through our basement. I personally blocked one of the places where they were coming through from the basement. Pest control specifically said it was all because of bird food being all over the place, and the place is not clean. They went to her unit, not [L.'s], because [L.'s] was clean. Our garage was totally fine. The basement suites are lower than the garage.

The Tenant said:

What I found out about the dogs was that [C.L.] and [L.] were texting each other about when they would be taking dogs out, so they wouldn't meet up. [C.L.] has a little dog and an old dog, and the other dog didn't like each other.

When [the Agent, N.R.] called, she mentioned the parking. I had no idea that [C.L.'s] guests were parking there. Maybe she didn't even know they were doing it.

I did everything I could. I took pictures three days after the notice was served and you can see that I'm not blocking anything, it's not dirty, and there are no bird feces or feed, and I clean their cages regularly.

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

...

(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 *[assigning and subletting]*;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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 Landlord alleged that the Tenant illegally sublet the rental unit without the Landlord's written permission to do so, contrary to section 34 of the Act. The

Landlord also alleged that [C.L.], the person permitted on the property by the Tenant, significantly interfered with or unreasonably disturbed another occupant, the next door neighbour, [L.].

Section 34 of the Act addresses the rules surrounding assigning or subletting a rental unit. Section 34 states that a tenant must not assign or sublet a rental unit without the Landlord's written consent. However, if it is a fixed-term tenancy with six or more months remaining in the term, the landlord must not unreasonably withhold consent required under subsection 34 (1). Further, a landlord must not charge a tenant anything for considering, investigating, or consenting to an assignment or sublease under section 34.

Policy Guideline #19, "Assignment and Sublet" ("PG #19"), clarifies section 34 of the Act. PG #19 states:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) allow a tenant to assign their tenancy agreement and to sublet their rental unit or manufactured home site. In most circumstances, unless the landlord consents in writing, a tenant must not assign or sublet (there are exceptions to this for manufactured home parks). A tenant who assigns their tenancy agreement, or sublets their rental unit, without obtaining the written consent of the landlord, may be served with a One Month Notice to End Tenancy (form RTB-33), pursuant to the Legislation.

...

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.

C. SUBLETTING

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. 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. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

In the case before me, I find that the Tenant essentially sublet her rental unit to [C.L.] without the Landlord’s written consent, even though there is no evidence before me that [C.L.] paid any rent to the Tenant. I find that the Tenant remained responsible for the rental unit and to the Landlord for [C.L.’s] behaviour while living in the residential property.

When I consider all the evidence and authorities before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. First, I find that the Tenant did not obtain the Landlord’s written consent to sublet or assign the rental unit.

Further, based on the letter from the other tenant, [L.], and the evidence before me overall, I find that [C.L.], the sublessee, interfered with [L.’s] enjoyment of his rental unit in the residential property. I find [C.L.] and her friends significantly interfered with and unreasonably disturbed this other tenant of the residential property. The Tenant is responsible for her own actions, as well as those of anyone she permits to be on the residential property. Accordingly, I find the Tenant responsible for the behaviour of [C.L.] and her friends, while the Tenant was away from the residential property.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Accordingly, and **pursuant to section 55 of the Act**, I grant the Landlord an Order of Possession for the rental unit. Given that the effective vacancy date has passed, the **Order of Possession will be effective two days** after the Tenant receives the Order.

Given the Landlord’s success in this matter, I also award the Landlord with recovery of his \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. I authorize the Landlord to retain **\$100.00** from the Tenant’s \$400.00 security deposit in complete satisfaction of this award.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice. I dismiss

the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of June 30, 2022.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service** of this Order is affected on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also awarded recovery of his \$100.00 Application filing fee from the Tenant. I authorize the Landlord to retain **\$100.00** from the Tenant's \$400.00 security deposit in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2022

Residential Tenancy Branch