# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOWE SOUND HOSPITALITY
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes Landlords: OPE
Tenant: CNC

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (the "Act") for an Order of Possession under a One Month Notice to End Tenancy for End of Employment dated August 2, 2022 (the "One Month Notice"), pursuant to sections 48 and 55.

The Tenant also applied under the Act to dispute a One Month Notice to End Tenancy for Cause pursuant to section 48.

One of the Landlords, YL, the Landlords' agent CH, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. YL testified in this hearing with the assistance of an interpreter, SL.

Preliminary Matter – Amendment of the Tenant's Application

The Tenant had applied to dispute a One Month Notice to End Tenancy for Cause, although the evidence suggests that the only notice to end tenancy at issue between the parties is one regarding end of employment.

Rule 4.2 of the Rules of Procedure states:

> **4.2 Amending an application at the hearing**
> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to

> an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find it can be reasonably anticipated that the Tenant is disputing the One Month Notice, rather than another notice to end tenancy. Accordingly, I have amended the Tenant's application such that it is for disputing a One Month Notice to End Tenancy for End of Employment rather than for Cause.

Preliminary Matter – Correction of Parties

The Landlords' application initially listed CH and MG as landlords. It also listed the Tenant and MG as tenants.

The Tenant's application listed herself as the sole tenant and Howe Sound Hospitality ("HSH") as the landlord.

I understand the Landlords' evidence during the hearing to be that YL is an owner of HSH and that CH is YL's assistant. The parties agreed that MG is the Tenant's partner who resides in a different room in the motel and should not be part of this hearing.

Section 1 of the Act defines a "landlord", in relation to a rental unit, to include:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> > (i) permits occupation of the rental unit under a tenancy agreement, or
> > (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I find that YL, as an owner and agent of HSH, permits occupation of the rental unit and exercises powers and performs duties under the Act, thereby falling under the definition of a "landlord" above. I find that YL, not CH, to be the person authorized to make decisions on behalf of HSH. I find this information was reasonably known to the Tenant, who was employed by HSH and worked under YL. As such, I have amended the Landlords' application to remove CH as a landlord and added YL and HSH as landlords pursuant to Rules 4.2 and 7.13 of the Rules of Procedure.

I find MG is neither a landlord nor a tenant for the purposes of this dispute. I have amended the Landlords' application to remove MG as a party pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Correction of Dispute Address

The dispute address on the Landlords' application was missing the unit number for the rental unit. Based on the parties' testimonies, I have corrected the dispute address pursuant to Rule 4.2 of the Rules of Procedure and section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to the service of documents. The Tenant confirmed receipt of the Landlords' notice of dispute resolution proceeding package and documentary evidence (the "Landlords' NDRP Package"). The Landlords submitted a signed Proof of Service form dated September 1, 2022. I find the Tenant was served with the Landlords' NDRP Package pursuant to sections 88(g) and 89(2)(d) of the Act.

YL confirmed receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (the "Tenant's NDRP Package"). The Tenant submitted a signed witness statement dated August 26, 2022 in support of service. I find the Landlords to have been sufficiently served with the Tenant's NDRP Package pursuant to section 71(2) of the Act.

Issues to be Decided

1. Is the Tenant entitled to dispute the One Month Notice?
2. Are the Landlords entitled to an Order of Possession?

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 the parties' applications and my findings are set out below.

The rental unit is a suite in a motel owned and operated by HSH. YL is an owner of HSH and had taken over the business from the previous owner in July 2014.

According to copies of a record of employment ("ROE") submitted into evidence by the parties, the Tenant was an employee of HSH from February 2021 to July 2022.

The Tenant testified she has been residing in the rental unit for approximately 8 years and started working at the motel under the previous owner.

YL's evidence was that the previous owner did not have any paperwork regarding the Tenant's tenancy or employment. YL does not know if the Tenant pays any rent at all. CH testified that the Tenant did a lot of work for YL, including running the shop so that YL could go home on weekends to be with his family.

CH further explained that the Tenant has been accused of stealing from HSH. CH testified that the Tenant subsequently gave 2 weeks' notice to quit her job. CH stated that HSH accepted the Tenant's resignation, which is why the ROE says the Tenant had quit. CH submitted that the Tenant never paid any rent for her room and has continued to occupy the room for several months with no payment. According to YL, the rental unit is a regular guest suite, not a caretaker suite, with a market rent of $110.00 per night. YL expressed his intention is to take back the rental unit and renovate it now that the Tenant's employment has ended.

A copy of the One Month Notice is submitted into evidence. The One Month Notice is signed by YL and has an effective date of September 2, 2022. The One Month Notice states that the reason for ending the tenancy is: "Tenant's rental unit/site is provided by the employer to occupy during the term of employment and employment has ended." The One Month Notice provides the following additional details of cause (portions redacted for privacy):

> *On July 21, 2022 [the Tenant] was found to be stealing from the [motel] office. [YL], Security and [YL's interpreter] brought her to the office to discuss this matter. [The Tenant] Then admitted she took the money for a vet bill. And gave [YL] a two week notice. Due to the theift (sic) it was decided her immediate dismissal was in order. RCMP File # [number]. Cst. [name] arrived on site to assist receiving property keys back.*
>
> *Cst. [name] advised us of these forms to have the process started to gain access back to the unit currently in her possession. The unit was a place for [the Tenant] to use during her employment period, now that she is no longer an employee we ask that [the Tenant] vacate the unit.*

The Tenant's application indicates that the Tenant received a copy of the One Month Notice on August 2, 2022 in person.

The Tenant stated that she lived at the rental unit before she started her employment at the motel. The Tenant testified that she had paid monthly rent of $500.00 to the previous owner. According to the Tenant, the payment dates coincided with her paycheque and that it was "casual". The Tenant acknowledged she has not paid any rent to the Landlords since before COVID-19 started. The Tenant testified that there was another manager, PJ, running the business for YL before YL took over personally. The Tenant stated that PJ had temporarily laid the Tenant off due to lack of business. The Tenant stated she had received free rent from PJ for a year as a bribe.

The Tenant acknowledged that YL was not aware of what PJ was doing. The Tenant stated that she was later offered her job back. The Tenant testified that when YL stepped into the management role, there had been no formal agreement written up. It is not disputed that the Tenant has not paid any rent for the rental unit since then.

The Tenant testified she "did everything" for the business and that was on 24-hour call by YL. The Tenant denied that she had stole money or admitted as such. The Tenant stated that the parties have a separate case with "labour standards". The Tenant testified that there are serious issues with mould in the rental unit caused by a roof leak.

Analysis

*1. Is the Tenant entitled to dispute the One Month Notice?*

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.

Sections 48(1) and (2) of the Act permits a landlord to end a tenancy for end of employment as follows:

> **Landlord's notice: end of employment with the landlord**
> 48 (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

(a) the rental unit was rented or provided to the tenant for the term of his or her employment,
(b) the tenant's employment as a caretaker, manager or superintendent is ended, and
(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

Section 48(4) of the Act requires that the one month notice to end tenancy comply with section 52 of the Act in order to be effective. Section 52 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.

I find there is a minor typo with the spelling of the Tenant’s name on the One Month Notice. Furthermore, I find the One Month Notice names YL as the landlord rather than HSH. Section 68(1) of the Act states:

**Director's orders: notice to end tenancy**

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that
(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
(b) in the circumstances, it is reasonable to amend the notice.

In this case, I find it is reasonable to amend the One Month Notice to add HSH as a landlord and to correct the spelling of the Tenant's name. I find this to be information that would have been known by the Tenant, since the Tenant was employed by HSH and managed by YL. I find the One Month Notice otherwise complies with the requirements of section 52 in form and content.

Based on the Tenant's application, I find the Tenant received the One Month Notice on August 2, 2022, in accordance with section 88(a) of the Act.

Section 48(5) of the Act permits a tenant to dispute a one month notice to end tenancy for end of employment within 10 days after receiving such notice. Therefore, the Tenant had until August 12, 2022 to dispute the One Month Notice. Records indicate the Tenant made her application on August 4, 2022. I find the Tenant made her application within the time period required by section 48(5) of the Act.

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, I find the Tenant has not paid any rent for her occupation of the rental unit during her employment with HSH beginning in 2021. I find the Tenant has continued to reside in the rental unit without paying any rent since she resigned from her job in July 2022.

I find the parties did not draw up any written agreements or have any specific discussions regarding the Tenant's use of the rental unit or her employment with HSH. However, I find that it can be inferred from the parties' conduct that there was an implied term in the parties' verbal employment agreement, under which the rental unit would be provided to the Tenant free of charge for the duration of her employment with HSH. I find that this implied term is necessary to give business efficacy to the arrangement between HSH and the Tenant. I find that an absence of this implied term would lead to the absurd scenario in which the Tenant could quit her job and continue to reside in the rental unit rent-free.

I accept that this arrangement may be different from the one that the Tenant had with the previous owner. However, I find the parties implicitly consented to this arrangement by virtue of their conduct.

As mentioned above, section 48(2) states that “An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.”

I find that HSH was the Tenant’s employer and that there was an implied term for the rental unit to be provided to the Tenant free of charge during the term of her employment. I find it is undisputed that the Tenant’s employment with HSH ended in July 2022. I further find the Tenant has not provided any other form of consideration in exchange for a right to occupy the rental unit since her employment ended.

Based on the foregoing, I conclude that the Landlords have proven the grounds for issuing the One Month Notice and for ending the tenancy under section 48(2) of the Act. The Tenant’s application is therefore dismissed without leave to re-apply.

*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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant’s application, I find the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlords effective two (2) days after service of the Order upon the Tenant.

Conclusion

The Tenant’s application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days** after service upon the Tenant. 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.

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: December 12, 2022

Residential Tenancy Branch