



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF VANCOUVER and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause.

The tenant and 2 agents for the landlord attended the hearing, and both agents for the landlord gave affirmed testimony.

The landlord's first agent submitted that the tenant was served with the landlord's evidentiary material, which was not disputed by the tenant. However, the landlord has not received any evidence from the tenant. The tenant has provided a copy of a One Month Notice to End Tenancy for Cause and one other document, but agreed that he has not provided it to the landlord because the tenant did not consider it to be evidence. Therefore, all evidence of the landlord has been reviewed and is considered in this Decision, and none of the tenant's evidence is considered.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated October 28, 2022 was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The first agent of the landlord** (CB) testified that this month-to-month tenancy began on December 15, 2019 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is \$320.00 payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit

from the tenant in the amount of \$160.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom apartment in government subsidized housing. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on October 28, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause by personally handing it to the tenant by the landlord's agent and the landlord's second agent as a witness. A copy of the Notice has been provided for this hearing and it is dated October 28, 2022 and contains an effective date of vacancy of November 30, 2022. The reason for issuing it states: "Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent." The Details of Cause(s) section states: "Tenant suspected of subletting unit. Proven to be so as per Craigs List advertisement and unit inspection."

A person spoke to a staff member of the landlord in a state of fear identifying that she was there to view unit 604, which is the unit the tenant occupies. The person explained that on October 26, 2022 she entered the unit and became quite fearful because the tenant asked her to take off her jacket and mask and stay to talk. The person showed the Craigslist advertisement that she was responding to, to the staff member of the landlord. The staff member immediately notified the landlord. Rent is geared to income from all sources, and the advertisement was researched on Craigslist.

Another person sent an email to the landlord, a copy of which has been provided for this hearing, indicating that the person recently came across the advertisement and was attacked with racial slurs against East Indian people.

Copies of the Craigslist advertisement have also been provided by the landlord for this hearing, which indicates that rent is \$850.00 for a 1 bedroom furnished unit, and states, "I love chatting with my new roomie." The landlord's agents did not speak to the tenant, but in researching the advertisement, the timeline was quite tight; a young woman feeling unsafe and another person feeling harassed, so the landlords felt they needed to act quite quickly.

The tenant was served with a notice to enter and on October 28, 2022 an inspection was completed. The notice to enter also states that photographs would be taken. The advertisement shows photographs which are an accurate depiction of the tenant's rental unit. The landlord's photographs were taken on October 28, 2022, which shows the same shower curtain and other similarities. Also provided is a CBC news article showing that this is not outside the tenant's recorded history.

The landlord's agent testified that the tenant is in breach of the tenancy agreement; tenants must be forthright about other occupants because rent is geared to income for the household.

The tenant has not moved out or allowed someone else to move in, and the notice to end the tenancy should really say "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

**The second agent of the landlord** (RY) testified that the person in the landlord's evidence is a true likeness of the person that the landlord's second agent knows as the tenant in unit 604.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

I refer to Residential Tenancy Policy Guideline #19 – Assignment and Sublet, which states, in part:

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.

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.

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement. 'Sublet' has also been used to refer to situations where the tenant remains in the rental unit and rents out space within the unit to others. However, under the Act, this is not considered to be a sublet.

A tenant may assign or sublet their interest in a tenancy agreement only with the prior written consent of the landlord. If a tenant assigns or sublets without

obtaining the landlord's prior written consent (or, in the case of a manufactured home, a director's order), the landlord has cause to serve a One Month Notice to End Tenancy (form RTB 33) under the Legislation<sup>5</sup>. Whether or not such a notice is successful, if challenged, will depend on an arbitrator's finding as to whether a sublet as contemplated by the Legislation has occurred.

In this case, there is no evidence that the tenant has assigned or sublet, and the advertisement does not indicate that. Therefore, I find that the landlord has failed to establish that the tenant has assigned or sublet without the landlord's written consent.

I therefore cancel the One Month Notice to End Tenancy for Cause and the tenancy continues until it has ended in accordance with the *Act*.

### Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated October 28, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the *Residential Tenancy 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: January 31, 2023

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Residential Tenancy Branch