



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ace Agencies  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNL, AS**

### **Introduction**

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- an order allowing the tenants to sub let the rental unit pursuant to section 65

Both parties attended the hearing with the landlord represented by agents TG and LK, while the tenants CP and MM appeared for themselves. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated that they served the One Month Notice dated October 31, 2022 with an effective date of December 31, 2022 on the tenants by email October 31, 2022. The landlord stated that service by email was agreed to at the commencement of the tenancy and they provided in evidence a form that was signed by the tenants and consenting to the use of email as an address for service. Pursuant to section 89 of the Act the tenants are found to have been served with this notice in accordance with the Act.

The landlord testified that they served their materials in support of the tenants' application by email and based on their testimonies I find the tenants served in accordance with sections 88 and 89 of the Act.

The landlord acknowledged receipt of the tenants' dispute notice and evidence package. I find that the landlord has been properly served pursuant to section 88 of the Act.

### Preliminary Matters

The parties agreed that the individual MD listed on the dispute application is not in fact a tenant, and the tenants' application is amended accordingly. Additionally, the tenant MM's name was amended on the application to reflect his correct name.

The tenants' filed a dispute application in relation to a Two Month Notice to End Tenancy. At the hearing the parties confirmed that the only notice served on the tenants is the One Month Notice that is the subject of this dispute. The application is amended pursuant to section 64(3)(c) of the Act to reflect that the dispute is in relation to a One Month Notice.

### Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Are the tenants entitled to an order permitting them to sub let the rental unit?

### Background and Evidence

The tenancy commenced on May 15, 2021 for a fixed term until May 31, 2022 and then month to month thereafter. Rent is \$1,200.00 per month due on the first day of the month. A security deposit of \$600.00 is held in trust by the landlord. Tenant CP no longer occupies the rental unit. The rental unit is currently occupied by tenant MM and two other individuals who are not currently tenants.

The landlord testified that in May of 2022 they were contacted by tenant CP who advised by email that he wished to vacate the residence. The tenant did not give proper notice at that time and the notice was not accepted by the landlord. The landlord replied to the tenant CP's notice by stating that if he gives notice to vacate, this is

considered notice to vacate for all tenants currently occupying the residence. The May 3, 2022 email response from the landlord was provided in evidence.

In October 2022 the tenant CP contacted the landlord again and advised that he had moved out, recognized that the current arrangement is “technically not legit” and expressed a desire that another individual, who was currently living in the residence but not on the tenancy agreement be allowed to apply to stay there. The landlord agreed to accept the application of the prospective tenant as well as the application of the tenant MM who remained in the rental unit. The emails dated October 26 and October 28, 2022 were provided in evidence.

The landlord further stated that they processed the new applications from the current tenant MM and another prospective tenant who was already occupying the rental unit to live in the rental unit as the sole tenants. Neither application was accepted by the landlord and this refusal was communicated to the tenant CP by email October 31, 2022. The email was provided in evidence and the One Month Notice dated October 31, 2022 issued as the tenants sub-let the rental unit without the landlord’s consent was then served on both tenants.

The landlord is seeking to end the tenancy of MM and CP on the basis that they have sublet the rental unit without the landlord’s approval. The landlord is not consenting to subletting the unit and is not prepared to approve a tenancy between the landlord and the tenant MM and the other current occupant of the rental unit.

The tenants did not dispute the landlord’s evidence and added that there is now another occupant of the residence who has not signed a tenancy agreement. Tenant CP also stated that he collects the rent and wishes the current occupants of the rental unit to remain.

### Analysis

RTB Policy Guideline 13 states in part:

Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.

The landlord did not accept tenant MM's application for a new tenancy. Therefore, the tenancy has ended for all tenants.

There is no requirement under the Act for the landlord to consent to a sublease if the tenancy is a month-to-month tenancy. Pursuant to section 34 of the Act, the tenants require consent of the landlord to sub-let. The landlord is not consenting.

I therefore dismiss the tenant's application for for an order allowing them to sub-let the rental unit. I also dismiss the tenant's application disputing the One Month Notice as the tenancy has ended.

Section 55 of the Act requires me to grant an order of possession in favour of the landlord if I find that the landlord's notice complies with the form and content requirements of section 52 of the Act are met, and I have dismissed the tenants' application for dispute resolution. I find that the One Month Notice meets the form and content requirements of section 52 of the Act, and I have dismissed the tenants' application for dispute resolution.

The landlord is granted an order of possession effective January 31, 2023 at 1:00pm.

### Conclusion

The landlord is granted an order of possession which will be effective on January 31, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 18, 2023

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Residential Tenancy Branch