



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Newton Kinsmen Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes    CNC

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

Tenant AM and the respondent, represented by agents DB (the landlord) and MN attended the hearing. The tenant was assisted by counsel ER. Witness for the tenant PT and for the landlord SC also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I note that section 55(1) of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Amendment

Both parties agreed that named applicants VL, JL and AL (the minors) are under the age of 19 and that the respondent landlord is Newton Kinsmen Housing Society

Pursuant to section 64(3)(a) of the Act, I have amended the application to exclude the minors and to name the respondent landlord Newton Kinsmen Housing Society.

### Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in May 2022. Monthly rent is \$561.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$623.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates the authorized occupants, other than the tenant, are the minors and states:

#### 13. Occupants

(a) The landlord has determined that the tenant is eligible to occupy the rental unit based on specific eligibility criteria including, but not limited to, the tenant's household composition and household income.

(b) Only those persons the landlord has approved and who are listed as tenants and occupants on page one of this tenancy agreement or who are listed on an approved List of Additional Tenants and Occupants may occupy the rental unit while this tenancy agreement is in effect. No tenancy is created between the landlord and occupants.

(c) Any change in the tenant's household composition and household income is material and may result in the tenant no longer satisfying the landlord's eligibility criteria for the rental unit and, in such event, the landlord may serve a notice to end the tenancy.

(d) Prior to adding or deleting any occupant(s), the tenant must complete a Request for Addition or Deletion of Tenants and/or Occupants form. The landlord will review the tenant's request and if approved, the tenant must complete a new declaration of income and assets and provide it to the landlord immediately. The landlord will assess the tenant's declaration of income and assets to determine whether the tenant remains eligible to occupy the rental unit and whether the tenant's rent will be adjusted.

(e) Any occupant living in the rental unit without the landlord's written permission will be considered to be an unauthorized occupant and if not approved by the landlord, the tenant may be served with a notice to end the tenancy.

Both parties agreed the landlord served the Notice by attaching it to the tenant's front door on September 23 and the tenant found it on September 24, 2022. The tenant submitted this application on September 26, 2022 and continues to occupy the rental unit.

The landlord submitted the Notice into evidence. It is dated September 23, 2022, and the effective date is October 31, 2022. The reason to end the tenancy is:

- The tenant knowingly gave false information to prospective tenant or purchaser of the rental unit.

The details of the cause are:

Newton Kinsmen Housing Society operates a subsidized housing complex of 30 units. [the tenant] was accepted as a tenant for herself and her three children, the tenancy began May 2022. The rent is based on family income. [the tenant] pays \$651.00 for a four-bedroom townhouse. We accepted [the tenant] as she presented herself as a single mother working to change the direction of her life and needed stable housing. [the tenant] moved in Mr. PL at the beginning of her tenancy without declaring him. PL is the father of [the tenant]'s three children. [the tenant] fraudulently represented herself during the interview and when signing the tenancy agreement and the 'application for rental subsidy'. It is considered a 'Breach of a Material Term of Tenancy' when PL was moved into the unit. A tenancy would not have begun if [the tenant] was honest and admitted PL was moving in.

The tenancy is rent geared to income and the landlord is a non-profit organization. The landlord submitted documents indicating the tenant's rent was calculated according to the tenant's income and the only household members are the tenants and the minors.

The landlord affirmed the tenant did not declare in the rental application and the tenancy agreement that PL would occupy the rental unit. The landlord stated that she has seen PL in the rental building various times since May 2022. The landlord testified that she saw PL in his pyjamas in the rental building on December 23, 2022 and again in January and February 2023.

The landlord submitted a photograph of a parcel addressed to PL in the rental unit in June 2022. The tenant and PL said that PL ordered products for the tenant and the minors online and the products were delivered to the rental unit once.

The landlord submitted a vehicle registration issued on June 20, 2022 indicating the vehicle belongs to the tenant and PL and the owners' address is the SU address. The landlord affirmed that she has seen this vehicle parked on the street close to the rental unit's entrance.

The landlord's witness SC, a resident of the rental building since November 2021, stated that she has seen PL in the rental building often, in the morning and evening, since May 2022. SC does not know if PL leaves the rental unit and goes home at night.

The tenant and PL testified that PL does not occupy the rental unit, but visits frequently, as he is the father of the minors. PL lives at the SU address, which is a house owned by PL's father.

The tenant submitted into evidence phone bills issued on June, July, August, and September 5, 2022, credit card statements due on July 5, August 4, September 6 and October 5, 2022, and PL's identity card, driver's license and services card. All these documents indicate that PL's address is the SU address.

The landlord said that it is possible to inform any address for the BC identity card, driver's license and services card.

PL affirmed that the minors do not go to his house because his father smokes in the house, does not speak English and does not get along well with the tenant.

PL stated that from June to mid-September 2022 he was sleeping in the rental unit four to five nights per week, as VL had health issues and PL was assisting VL. PL was unemployed during this time and spent more time helping the tenant and the minors.

PL has been sleeping in the rental unit at most two nights per week since mid-September 2022.

The tenant submitted a document signed by VL's physician on January 17, 2023 indicating the physician suspects since August 2022 that VL has a health issue.

The tenant emailed the landlord on November 15, 2022:

I moved in, my grandmother was hospitalized and later passed away in July. In August I had 2 appointments for my boys to see the paediatrician, we found out that my older son VL (7) had a heart murmur. I also was told from [the minors] 's paediatrician that he has concerns for him because he is presenting add/add behaviour. As you know I am a single mother, and the only help I have is their father. I take care of them full time, they don't spend the night anywhere on weekends, so it can be a lot for me. Having all this happening after moving in, it took a huge toll on me, so their dad would come and help me with the kids and spend the night so I could at least have a little rest. JL (4) wakes up multiple times during the night, having myself wake up and constantly putting him back into bed, while on the other hand my daughter AL (2), is still nursing through out the night so she also wakes up frequently. Going back and forth having to tend to both of them it is exhausting, I felt drained most of the day, on top of having all these circumstances that had happened I'm sure you can sympathize with what I was going through. I needed help and their dad was able to, so he would sleep with [redacted] so I could get some much needed rest during the night. He was over so much helping me that he actually got laid off from work but he really could see me struggling and he knew he couldn't turn a blind eye when he knows what's been going on and knows that I have no one else to help me go through a very difficult time. I am able to provide proof of their dads residence where he has lived since 2012. I am also able to provide proof of my grandmother passing in July.

The tenant submitted a death certificate indicating that the tenant's grandmother died on July 09, 2022.

The landlord did not serve a warning letter to the tenant, as the tenant breached a material clause of the tenancy agreement by allowing PL to occupy the rental unit.

The landlord testified that the tenant and PL live a luxurious lifestyle, own new luxurious vehicles, travel, and should not live in the rent geared to income rental unit.

### Analysis

Pursuant to Rule of Procedure 6.6, 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 landlord has the onus of proof to establish that the Notice is valid.

The tenant confirmed receipt of the Notice on September 24, 2022 and submitted this application on September 26, 2022. I find that the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act.

Section 47(1) of the Act states the landlord may end a tenancy by giving notice if:

- h) the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;  
[...]
- j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

I accept the uncontested testimony that PL is the minors' father.

I find SC's testimony does not prove that PL occupies the rental unit, as SC does not know if PL leaves the rental unit and goes home at night.

Based on PL's convincing testimony, I find PL sufficiently explained why he received a parcel in the rental unit.

Based on PL's convincing testimony, I find PL sufficiently explained why the minors do not go to his house.

Based on PL's convincing testimony and the physician's note dated January 17, 2023, I find PL sufficiently explained why he visited the rental unit so often from June to mid-September 2022. Furthermore, the tenant's email dated November 15, 2022 and the death certificate further explain why PL visited the rental unit so often from June to mid-September 2022.

The landlord's testimony about providing any address for the BC identity card, driver's license and services card is vague.

Based on the convincing testimony offered by the tenant and PL, the phone bills issued on June, July, August, and September 5, 2022, credit card statements due on July 5,

August 4, September 6 and October 5, 2022, and PL's identity card, driver's license and services card all indicating that PL's address is the SU address, I find the landlord failed to prove, on a balance of probabilities, that PL occupies the rental unit. I find that PL lives at the SU address and visits the rental unit.

Furthermore, the landlord may end a tenancy under section 47(1)(j) of the Act when a tenant gives false information about the rental unit to another prospective tenant or purchaser when viewing the rental unit. Based on the landlord's testimony and the Notice, I find the landlord served the Notice because the tenant breached a material term of the tenancy agreement by not informing the landlord that PL would occupy the rental unit. This is not a cause to end the tenancy under section 47(1)(j) of the Act.

In order to end a tenancy under section 47(1)(h) of the Act, the landlord must serve a written warning and allow the tenant a reasonable time to correct the breach. I accept the landlord's undisputed testimony that the landlord did not serve a written warning.

Based on the foregoing, I find the landlord failed to prove, on a balance of probabilities, the ground of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

### Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the 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: February 17, 2023

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Residential Tenancy Branch