



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SEMIAHMOO PENINSULA AFFORDABLE HOUSING SOCIETY LTD  
AKA SPAHS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated October 27, 2022 (1 Month Notice).

The tenant and an agent for the corporate landlord, VL (agent) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing. I have summarized all of the evidence relevant to the matter before me below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding service, both parties confirmed they were served with documentary evidence and that they had the opportunity to review that evidence prior to the hearing. Accordingly, I find the parties were sufficiently served.

### Preliminary and Procedural Matters

The parties confirmed their email addresses. The parties were also advised that the decision would be emailed to both parties. As the filing fee was waived it will not be considered further in this decision.

### Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, should the tenancy continue?

- If no, is the landlord entitled to an order of possession under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on September 1, 2020. The agent confirmed that the tenant's rent is subsidized so the tenant's portion of rent is \$536 until the end of May 2023 based on annual reviews of income.

The tenant confirmed that they were served on October 27, 2022 with a 1 Month Notice to End Tenancy for Cause dated the same date, which was posted to their door. Then tenant filed their application to dispute the 1 Month Notice on October 28, 2022. The landlord listed one ground as follows:

**Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.**

The "Details of Cause" section of the 1 Month Notice:

**Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.**

Details of the Event(s):

UNIT IS SUBSIDIZED AND TENANT HAS AT LEAST TWO ADDITIONAL UNDECLARED OCCUPANTS. WE HAVE HAD MULTIPLE COMPLAINTS AND HAVE RECEIVED DOCUMENTATION SHOWING THESE TWO INDIVIDUALS ARE RESIDING IN THE UNIT WITHOUT LANDLORD PERMISISON AND AGAINST THE SIGNED TENANCY AGREEMENT THAT STATES ONLY LISTED OCCUPANTS CAN RESIDE IN THE UNIT AS HOUSEHOLD COMPOSITION IS USED TO CALCULATE RENT.

The parties confirmed that the tenant originally occupied unit 40 and then later changed rental unit to unit 4, where the tenant continues to reside. The tenancy agreement under Term 8 clearly indicates that there is an agreement with BC Housing as follows:

#### **8. Agreement with BC Housing**

The Landlord has entered into an agreement with BC Housing designating the Residential Property as housing for low and moderate income tenants.

The agent raised the issue of two adults, PB and AR (PB and AR). The full names of PB and AR are listed on the cover page of this decision for ease of reference. The agent stated that the landlord has received many complaints from other occupants of the rental building alleging that the tenant rents a bedroom to PB and AR. The tenant claims that PB is their nephew who resided with them for 1 month in 2021 when they were

quarantining from COVID. Regarding AR, the tenant testified that AR was there for 2 or 3 days in January 2022 and then they started renting a basement together with PB. The tenant later changed their testimony regarding AR and admitted that AR was there for 2 weeks while quarantining from COVID. The tenant also referred to the basement as the place “they were renting” in the past tense, versus the present tense, which I will address later below.


The agent stated that the landlord continues to receive mail for both PB and AR who are listing the rental unit of the tenant as their own address. The tenant claims they the agent allowed PB to use the rental unit as their own address, which the agent vehemently denied during the hearing and stated that the agent would never give permission for someone who is not a tenant to use a rental unit of another tenant as their mailing address.

There is no dispute that the previous unit 40, was advertised on FaceBook by the tenant to seek roommates. The tenant denies that they have posted any such ads for their current unit, 4.

The tenancy agreement states the following in terms of “occupants”:

**14. 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. 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.
- (b) No tenancy is created between the Landlord and any Occupant other than those who are listed as Tenants on page 1 of this Agreement or on an approved List of Additional Tenants and Occupants. Only Tenants and Occupants approved by the Landlord may reside in the Rental Unit while this Agreement is in effect.
- (c) Prior to adding or deleting an Occupant, 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.

Initial


- (d) 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.
- (e) If the number of Occupants in the Rental Unit is unreasonable, the Landlord may discuss the issue with the Tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Act.**
- (f) The Tenant agrees that any person who lives in the Rental Unit for more than 14 days, whether consecutive or not, in any 3-month period without the consent of the Landlord will be considered an Occupant. If 19 years of age or older, that person's income and assets must be reported immediately to the Landlord in accordance with subsection 14(c) of this Agreement and that person must agree to be a Tenant under this Agreement by signing a copy of this Agreement.

The agent testified that they have received complaints from the Minister's office of people complaining that the tenant is receiving income from renting out a bedroom in their subsidized rental unit. The tenant claims that this is false and that she went through a messy divorce and that her ex-husband also lives in the building and must be filing the complaints anonymously.

The agent stated that on June 8, 2022, the agent did a routine inspection of the rental unit and found PB and AR sleeping in a bedroom that did not appear to have any children's items in the rental unit and that it appeared PB and AR were residing in the rental unit. The tenant referred to a tenancy agreement for PB and AR which indicates the start date of that tenancy for PB and AR began on January 1, 2022, however, that is before the date that the tenant indicates that AR was residing for 2 weeks with the tenant at the rental unit address.

The tenant claims that PB and AR also babysit for the tenant and sometimes house-sit when the tenant goes on holiday such as in July to August when the tenant claims they were in the USA with their brother. The tenant has two children, ages 2 and 9. The tenant confirmed that they are not working.

The landlord submitted at least 2 warning letters advising the tenant that there have been complaints about the tenant renting rooms or having other adults stay in the rental unit. The first is dated September of 2020 and the second is dated September 26, 2022. I will refer to the September 26, 2022 as Second Warning Letter for the remainder of this decision. The Second Warning Letter also includes the following:

Please provide off site residency for both unauthorized individuals who were reported and noticed living in your unit.

We require you to provide us at least three (3) proofs of off-site residence for

the above mentioned persons by **Friday, September 9, 2022 the latest,**

Proofs of off site residency are considered the followings:

- Driver license – his/hers- copy
- Residential Tenancy Agreement – with his/her name listed on –either as principal applicant or co-applicant – copy
- One Utility bill with his/her name on – copy
- Car insurance - with his/her name on - copy

The letter also refers to the tenancy agreement “occupants” terms and the alleged violation of those terms.

The agent stated that the tenant failed to provide 3 proofs as requested for PB and AR and instead only supplied a tenancy agreement, which the tenant referred to in the past tense, a photo ID for only AR, and nothing further.

The agent stated that they would agree to an order of possession for the end of April 2023 to give the tenant additional time to find a new residence. Copies of mail to PB and AR at the rental unit address were submitted in evidence for consideration.

### Analysis

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

**1 Month Notice to End Tenancy for Cause** – When a landlord issues a 1 Month Notice, the onus of proof reverts to the landlord to prove any of the causes listed on the 1 Month Notice if the tenant applies to dispute the 1 Month Notice within the time period provided under section 47 of the Act. I find the tenant did file their application within the 10-day timeline and as a result, I find the landlord has the burden of proof in this matter.

I find the tenancy agreement does confirm clearly that the rent is subsidized by BC Housing and that occupants are restricted based on the number of occupants as per term 14 of the tenancy agreement. In addition, I find the 2 warning letters support that the tenant has been formally cautioned by the agent to not have other occupants in the rental unit and that the June 8, 2022 inspection confirmed that there were 2 adults sleeping in the rental unit that appeared to be residing there.

I will now address credibility. I do not find the tenant credible as their testimony was inconsistent throughout the hearing. The tenant first testified that AR was only there for 2-3 days and later changed their testimony to be 2-3 weeks. The tenant also spoke of the tenancy agreement of PB and AR in the past tense, which I find supports that the tenants no longer occupy the address listed on the other tenancy agreement submitted for PB and AR. In addition, I find that the tenant provided insufficient rationale for why someone who is not working requires adults to sleep over at their rental unit so much and to use their address as a mailing address.

I find the agent was consistent with their testimony throughout the hearing and as a result, I find them more credible and therefore, I prefer the testimony of the agent over the tenant. Consequently, and based on the above, I find that the tenant has more likely than not permitted PB and AR to reside in the rental unit as more than guests, contrary to the tenancy agreement, which I find is also supported by the ongoing mail received for PB and AR to the rental unit address submitted in evidence by the landlord.

Given the above, I **dismiss** the tenant's application in full, **without leave to reapply**. I **uphold** the landlord's 1 Month Notice dated October 27, 2022 as I find the agent has provided sufficient evidence to support that the cause listed in the 1 Month Notice is valid. I find the tenancy ended on the effective vacancy date listed on the 1 Month Notice, November 30, 2022.

Section 55(1) of the Act applies and 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.**

[emphasis added]

Given the above and considering that I find the 1 Month Notice complies with section 52 of the Act, I must grant the landlord an order of possession. As the agent agreed to the end of April 2023, I grant the landlord an order of possession **effective April 30, 2023 at 1:00PM**.

### Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed and the 1 Month Notice issued by the landlord has been upheld.

The tenancy ended on November 30, 2022.

The landlord has been granted an order of possession effective April 30, 2023 at 1:00PM. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to both parties at the email addresses confirmed by the parties during the hearing. The order of possession will be emailed to the landlord only for service as necessary on the tenant.

The tenant is reminded that they can be held liable for all costs related to the enforcement of the order of possession including court costs and bailiff fees.

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: March 13, 2023

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Residential Tenancy Branch