



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Kelowna Friendship Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

The Tenant filed an Application for Dispute Resolution on December 5, 2022 seeking an order to cancel the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord on November 30, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 17, 2023. In this conference call hearing I explained the process and offered each participant who attended (the Landlord and the Tenant) the opportunity to ask questions.

The Tenant provided a document signed by the Landlord that they served the Notice of Dispute Resolution Proceeding as well as other necessary for this hearing. The Landlord signed the document on December 8, 2022 to attest to the fact that they received the information from the Tenant. The Landlord also confirmed in the hearing that they received letters of support that the Tenant provided as evidence.

The Landlord provided evidence to the Tenant for the hearing; the Tenant confirmed receipt on April 6. As per Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, this was within 7 days of the scheduled hearing as required.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One-Month Notice?

If the Tenant is unsuccessful in seeking to cancel the One-Month Notice, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement, signed by the Tenant on November 1, 2021, a renewal agreement when the Tenant changed rental units within the rental unit property. The Landlord explained that the matter of rent is geared toward the Tenant's income in this subsidized housing situation.

The agreement contains a number of terms concerning occupancy. According to the Landlord these are by regulation by BC Housing:

- Only Tenants and occupants approved by the Landlord, and listed in this tenancy agreement, may reside in the rental unit while this tenancy agreement is in effect.
- Any change in the Tenant's household composition 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.
- A resident is anyone who spends more than 14 days in the rental unit during any 12-month period.

The Landlord issued the One-Month Notice on November 30, 2022. The Tenant provided their copy in their evidence, showing the end-of-tenancy date as December 31, 2022.

On page 2 of the document, the landlord listed the following reasons and provided details on a separate two-page document:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord provided the following details:

Tenants daughter was evicted from another unit on the property for cause and she has moved into [the Tenant's] one bedroom unit with [their] family. [The Tenant's] daughter caused approximately \$10,000 in damages and repairs to the unit she was renting and has been in [the Tenant's] unit for 6 weeks. The tenancy agreement states that guests may stay for 14 days in a

calendar year. Tenant has been given a letter regarding [their] other children dated March 15, 2021 as well as a letter to all tenants dated November 3, 2022 regarding guests.

In the hearing the Landlord noted the Tenant's grandchildren were staying in the rental unit since summertime; however, they all moved out more recently on April 4. They knew of another unit available for the Tenant's daughter and their daughter's children (*i.e.*, the grandchildren) available in January 2023, so questioned why the grandchildren's move was sooner because of that availability.

The Landlord also pointed to the Tenant's other children staying with them in 2021. They issued a letter to the Tenant on March 15, 2021 pointing out that this was a problem at that time. That letter mentioned the material term of the tenancy agreement, as set out above.

Regarding the Tenant's more recent extra occupants who were their grandchildren, the Landlord issued a letter on November 8, 2022. This stated the Tenant was breaching the tenancy agreement "by allowing [the Tenant's] daughter and her family to stay in your one bedroom unit." The Landlord was aware the extra occupants had "overstayed the 14 days in a calendar year and must move on."

The Landlord provided a letter to all building residents on November 3, 2022. This listed the points about tenants and occupants, and states: "If you have moved in unauthorized guests, you are at risk of eviction."

The Landlord also provided a witness statement dated March 31, 2023, from an individual in the role of tenant support. They noted the Tenant's grandchildren had been staying since last summer, continuing to live with the Tenant. They named each of the grandchildren by their proper names, having directly observed them staying at the rental unit.

In the hearing, the Tenant stated their daughter stayed with them for a short time when evicted; however, this was not a six-week period as the Landlord put on the One-Month Notice. They noted the Landlord's March 2021 referred to different people who were staying with them at the time. The Tenant was not aware of warnings from the Landlord and could only recall one letter addressed to them about this particular matter.

The Tenant shared their feelings that this was a personal attack by the Landlord, because of who their family is. They had a liaison in their social worker, who represents the ministry that oversees the Tenant's social support. That individual was fully aware of the Tenant's grandchildren living in the rental unit. The Tenant shared the

importance of elders in their culture, and stated their feelings that the Landlord was not respecting that important tradition.

The Tenant reiterated that they received no warnings from the Landlord about this matter, only the One-Month Notice to end the tenancy.

### Analysis

The *Act* s. 47(1) states, in part:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (c) there are an unreasonable number of occupants in a rental unit;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy. The Landlord spoke to the reasons in oral testimony and provided documentary evidence; however, I find there is not sufficient evidence to show the One Month Notice is valid. Primarily, the evidence presented does not substantiate the grounds indicated on page 2 of the document.

The Landlord did not specify that the Tenant's grandchildren staying in the rental unit was an "unreasonable number of occupants in a rental unit." Though the Landlord mentioned that the rental unit was one bedroom, I find the Landlord did not show precisely how the number of people in the rental unit was limited, or posed some other hazard. I find this ground checked on the One-Month Notice does not apply to the present situation, and find there was not an "unreasonable" number of people in the rental unit at any given time.

Secondly, I find this is not a matter that violated the tenancy agreement to a degree that it constitutes a breach of a material term. As provided for in the *Residential Tenancy Branch Policy Guideline 8 'Unconscionable and Material Terms'*, which gives a statement of the policy intent of the *Act*, a material term is one which both parties agree

is so important that “the most trivial breach of that term gives the other party the right to end the agreement.”

The *Act* s. 47(1)(h)(ii) specifies the Landlord has provided written notice, specifying a breach of a material term, and set a timeline in which the Tenant must correct the issue. The November 8 letter directly to the Tenant does not qualify as such, not specifying a “material term” was in breach, and not setting a reasonable timeline for the Tenant to correct the issue. Because of this, I find that strictly speaking the Landlord cannot rely on indicating a breach of a material term on the One-Month Notice where they have not followed what s. 47(1)(h) requires regarding a material term breach.

The very important element regarding breach of a material term is that the Tenant had time to rectify the situation. There was no reference to dates by the Landlord in their evidence, the letter to the Tenant, or their testimony in the hearing. I find the Tenant was not afforded “a reasonable time after the landlord gives written notice to do so” after the November 8 letter the Landlord issued the One-Month Notice on November 30, 2022, and gave the Tenant no timeline in which to remedy the situation.

The Landlord referred to the Tenant’s other family members staying in March 2021. I find that issue was far removed from the present issue the Landlord was addressing by seeking to end the tenancy.

I give weight to the Tenant’s assurance that their grandchildren have since moved out from the rental unit, as of April 4, 2023. They were accommodating family members and assisting in the manner of a personal challenge their family member was facing. While the Tenant may not have communicated this completely to their Landlord, or in accordance with the tenancy agreement, there is no record of the Landlord emphasizing the procedure as set out in the tenancy agreement, instead issuing the One-Month Notice.

For these reasons, I order the One Month Notice issued by the landlord on November 30, 2022 is cancelled. The reasons for the Landlord issuing this document are not valid.

### Conclusion

For the reasons above, I order that the One-Month Notice issued on November 30, 2022 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 19, 2023

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Residential Tenancy Branch