



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution on September 23, 2020 seeking the following:

- to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the landlord on February 19, 2023;
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- compensation for the cost of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 12, 2023.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Tenant and the Landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

I find each party received the evidence of the other, with no statements made to indicate otherwise in the hearing; therefore, I give all relevant evidence consideration where necessary to do so in this decision.

### Issue(s) to be Decided

Is the Tenant granted a cancellation of the One-Month Notice?

If unsuccessful, is the Landlord entitled to an order of possession, as per s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement they had with the Tenant. The Tenant provided select pages of the same. This shows the tenancy starting on February 1, 2014.

The agreement provides that the *Act* applies, and that “The tenant may assign or sublet the rental unit to another person with the written consent of the landlord.”

The Landlord issued the One-Month Notice on February 19, 2023. This gave the end-of-tenancy date of March 31, 2023. The reason provided on page 2 of the document is: “Tenant has assigned or sublet the rental unit/site/property/park without landlord’s written consent.” On page 2 the Landlord listed details:

You assigned our house to your [family member, JN] without our knowledge or permission.

I was informed about this by your [family member] when [family member] called me to schedule a time to look at the damage to the ceiling.

In their written submission, the Landlord set out the following points/timeline:

- on February 25, 2021 the Landlord received rent from the Tenant’s family member JN, not from the Tenant. Since then, all rent payments had come from JN. The Landlord messaged to the Tenant about this, and the Tenant had stated to the Landlord that this was a new joint account they had with JN.
- the Landlord had no reason to doubt this statement from the Tenant and accepted it. (In the hearing the Landlord reiterated that they thought payment was coming from the Tenant after the Tenant had said it was a joint account.)
- JN’s former Landlord provided a written statement as evidence that JN relocated from their former residence to the rental unit in early March 2021.

- when the Landlord visited on February 8, 2023, JN was present, and again on April 5, 2023
- the Landlord tried to end the existing tenancy with the Tenant and establish a new agreement with JN
- in line with this, on February 24, 2023 the Tenant confirmed they did not reside at the rental unit and “had moved out approximately three months prior”
- in discussions, the Tenant had agreed to mutually end the tenancy; however, no final agreement was reached.

For the hearing the Landlord prepared evidence in the form of photos and videos. These depict JN and JN’s family as the ones present at the rental for a one-week period in May 2023. The Tenant only visited to the rental unit when the Landlord scheduled a visit for May 13.

In the hearing, the Landlord proposed a mutual end to this tenancy. This would entail the Tenant, as well as others residing in the rental unit, to vacate the rental unit by July 31, 2023. The Landlord agreed to that final month being rent-free. The Tenant, as well as JN who attended the hearing, stated that date would not work for them.

In the hearing, the Tenant presented that they resided in the rental unit along with their parents, JN, and JN’s three children. In their evidence, they presented pictures of bills and other mail sent to the rental unit in their own name, as well as that of each of their parents.

The Tenant explained the background to the current situation, when their sister JN didn’t have funds in March 2021, and moved into the rental unit with the Tenant. The Tenant stated they left after about a month, leaving JN staying in the rental unit with the Tenant’s parents. The Tenant stated their belief that this was not doing any harm because the rent was always being paid.

The Tenant confirmed they moved out in April 2021. After that time, JN was not paying rent to the Tenant but to the Landlord directly.

### Analysis

The Act s. 47 (1)(i) provides that a Landlord may end a tenancy by giving a One Month Notice to end the tenancy if the tenant “purports to . . . sublet the rental unit without first obtaining the landlord’s written consent as required by section 34.”

The Act s. 34(1) is explicit: “Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.”

In this analysis, I am also informed by *Residential Tenancy Policy Guidelines*, in particular *19: Assignment and Sublet*. This is a statement of the policy intent of the legislation, in line with statutory interpretation and the common law. This assists with the definition of “sublet” as found in the Act, noting: “. . . 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 sublet agreement.”

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find as fact there was a sublet agreement, whether written or oral, express or implied, in place between the Tenant and the third party JN. This supports the Landlord issuing the One-Month Notice, and I find it is valid.

I make this finding for the following reasons:

- the Landlord was receiving rent from the third party JN for quite some time;
- the Landlord thought, legitimately, that this rent was coming from a joint account with the third party JN and the Tenant, as told to them by the Tenant;
- at no point was their consent from the Landlord on any arrangement the Tenant made with the third party, and other occupants, who lived in the rental unit;
- there is no evidence of the Tenant asking the Landlord for their consent to a sublease agreement, as s. 34(1) requires and as set out in the tenancy agreement;
- the stay by the third party JN and other occupants in the unit was ongoing for an extended period;
- the Landlord was not fully informed of the situation in 2021 and throughout 2022 – I find the Tenant was being less-than-truthful about the situation;
- the Landlord had the right to engage with whomever was occupying the rental unit on their property – in this case they did so through issues of repair, and

discovered information about what was happening with the tenancy itself, unbeknownst to them.

I find the evidence shows that the Tenant breached the tenancy agreement, as well as s. 34 of the *Act*. That is legitimate grounds for the Landlord to end the tenancy.

Moreover, there was no evidence that the Tenant broached the subject of subletting or sought the Landlord's written approval. It is not an unfair expectation that the Tenant would do so and, in any event, some time in 2021 when other sub-tenants arrived and moved into the rental unit.

For these reasons, I dismiss the tenant's Application to cancel the One-Month Notice. The *Act* s. 55(1) states that if a tenant applied to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*.

I find the One-Month Notice issued by the landlord on March 31, 2023 complies with the requirements of form and content as set out in s. 52 of the *Act*.

By this provision, I find the Landlord is entitled to an Order of Possession. The Landlord opened the possibility of the Tenant and other occupants moving out by the end of July 31, 2023. I set this date as the final end-of-tenancy date in line with discussions the parties held previously. I note the Tenant/third party JN stated they could not accept the final month of the tenancy being July, even though the Landlord offered that month as rent-free. There was no agreement between the parties on the month of July 2023 being rent free.

As the Tenant was not successful in this application, I find they are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the Landlord effective **July 31, 2023**. I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed 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 s. 9.1(1) of the *Act*.

Dated: June 15, 2023

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Residential Tenancy Branch