



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding RENTPERKS BC PM LP  
WEST ACCOMMODATION INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR, FFL**  
                                 **CNC, OLC**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- An order of possession for unpaid rent pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The landlord was represented at the hearing by managing broker, JD. The tenant was represented by property manager GW and counsel, DM.

### **Service of Notice of Dispute Resolution Proceedings**

The landlord denied being served with the tenant's Notice of Dispute Resolution Proceedings package. The tenant's representative testified that he attended the address noted on both the landlord's notice to end tenancy and the landlord's Notice of Dispute Resolution Proceedings to personally serve it. The office of the landlord turned out to be a UPS store. On May 5, 2023, the tenant's representative personally delivered the Notice of Dispute Resolution Proceedings package to the attendant at the UPS store and that attendant put the package in the landlord's mailbox. The landlord's representative attending the hearing today advised that he is in Ontario and that his colleagues in BC did not forward any materials to him. In accordance with sections 89

and 90 of the Act, I determined that the tenant served the landlord with the Notice of Dispute Resolution Proceedings package on May 5, 2023.

The tenant's representative denied being served with the landlord's Notice of Dispute Resolution Proceedings package. The landlord acknowledged that in his application, he sought an order of possession for unpaid rent pursuant to sections 46 and 55 but that he never served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities upon the tenant. Consequently, I dismissed the landlord's application and advised the parties that only the tenant's application seeking to dispute the 1 Month Notice to End Tenancy for Cause would be considered in this hearing.

The second part of the tenant's application seeking an order that the landlord comply seeks an order for the tenancy to continue. I determined that this portion of the tenant's application is redundant to the issue of determining the validity of the notice to end tenancy and I dismiss it.

#### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

#### Background and Evidence

The parties agree on the following facts:

- This tenancy began with a different landlord, IL and the tenant on September 1, 2021.
- Rent was set at \$2,050.00 per month and a security deposit of \$1,025.00 was collected.
- An addendum to the tenancy agreement was signed by both the landlord and the tenant which includes clause 1.3 that allow the tenant to sublease the property
- The tenant named on the tenancy agreement is a company who sublet the rental unit to a subtenant on September 1, 2021. That tenant has remained the occupant of the rental unit since that date.
- The rental unit was purchased by the new landlord in spring 2023.
- On April 23, 2023, the landlord posted a 1 Month Notice to End Tenancy for Cause to the tenant's door
- The reasons for ending the tenancy were for a breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and tenant has assigned or sublet the rental unit without the landlord's written consent.
- The landlord does not allege the subtenant has contravened the Act, regulations or tenancy agreement.

Under details of cause, the landlord writes the following:

*The tenant has failed to produce a sub-lease and refused to hand evidence of one to the owner or property manager. The authority only allows a sub-lease where a sub-lease is entered into. The tenant maintains a web-site for placement of occupants. Despite numerous reasonable requests to see any sub-lease, we are left in a position with no details of who is occupying the premises on a month to month basis. A sub-lease must be seen to ensure it was done legitimately and has not been in fact assigned. We need to see any sub-lease so we can ensure the premises are not occupied by different people and to manage the maintenance of the property and access it. We do not grant any authority to this tenant to sub-lease this periodic month to month tenancy.*

#### Analysis

The tenant is deemed served with the notice to end tenancy on April 26, 2023, the third day after it was posted to the door of the rental unit. The tenant filed the dispute on May 2, 2023, within 10 days as required under section 47 of the Act.

When a tenant disputes a landlord's notice to end tenancy, the onus is on the landlord to prove the reasons for ending the tenancy.

Turning to the first reason:

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

There are 2 reasons why this reason for ending the tenancy should not be upheld.

First, the landlord has not identified what the breach of the material term of the tenancy agreement was. It appears from the details of cause that the landlord believes providing a copy of the sublease is a material term of the tenancy, however the requirement to provide that to the landlord is not reflected in the tenancy agreement or the addendum. In order for the landlord to allege breach of a material term, such a term must be included in the tenancy agreement. Without this term clearly being laid out, there can be no breach of the term.

Second, the landlord has not provided any evidence of providing the tenant with written notice of a breach and given the tenant a reasonable time to correct it.

It is obvious that the original landlord, IL fully understood that the tenant would sublease the rental unit. While the landlord made a vague argument that this agreement constitutes a commercial tenancy, I do not find that to be the case. Residential Tenancy Policy Guideline 14 – Type of Tenancy: Commercial or Residential states the following:

**Tenancies Established for the Purpose of Re-renting**

Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a "commercial tenancy" between the landlord and the "head tenant" and that an Arbitrator has no jurisdiction. This generally occurs in a manufactured home park.

The courts in BC have indicated that these relationships will usually be governed by the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. It is the nature or type of property that is regulated by the legislation. If the type of property comes within the definitions in the legislation and does not fall within any of the exceptions in the legislation, the Residential Tenancy Act or Manufactured Home Park Tenancy Act will govern.

I find that the type of property is a rental unit intended to be occupied by a residential occupant. The nature or type of property therefore falls within the jurisdiction of the Residential Tenancy Act.

The second reason for ending the tenancy is:

- tenant has assigned or sublet the rental unit without the landlord's written consent.

I turn to the addendum signed by the original landlord, IL and the tenant. It states at clause 1.3 the following:

1.3 The Landlord agrees to allow the Tenant to sublease the Property. (\*\*Landlord initials\*\*)

I note that clause 1.3 is clear and unequivocal. The landlord agrees to allow the tenant to sublease the property. It would be patently unreasonable to say that the original landlord didn't give the tenant written consent to sublease the rental unit.

When the current landlord purchased the rental unit, he took on the tenancy already in place which includes all the terms of the tenancy agreement's addendum. The current landlord is bound to those terms which openly allows the tenant to sublease the property. Further, the landlord does not dispute that the current subtenant has been occupying the rental unit for almost 2 years and has been trouble free. I see in evidence that the subtenant and the original landlord signed the form K Notice of Tenant's Responsibilities when the subtenant began occupying the rental unit. If the landlord wanted to know the identity of the subtenant, he could have sought this information from the property management company managing the building.

I find the tenant has not breached any material terms of the tenancy agreement. I find the landlord gave written consent for the tenant to sublease the rental unit. For these reasons, the landlord's notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue until it is ended in accordance with the Act.

#### Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

The remainder of both the landlord's application and the tenant's applications are both dismissed without leave to reapply.

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: August 23, 2023

---

Residential Tenancy Branch