



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS SENIOR CITIZENS HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, RP, PSF, AAT, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for an end to this tenancy on the basis of the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) and an Order of Possession pursuant to section 55 of the *Act*. The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law and to allow for a rent reduction for the landlord's failure to provide the services and facilities anticipated in the tenancy agreement and pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant's mother who has been residing with the tenant acted as the tenant's advocate during this hearing as the tenant's mother testified that her son, the tenant is functionally illiterate and required her assistance during this hearing. The tenant gave his permission to allow his mother to act as his advocate and make representations on his behalf. While the tenant participated at some times during this hearing, most of the evidence on his behalf was introduced by his mother in her role as his advocate.

As the tenant confirmed that he was handed the 1 Month Notice by the landlord on December 27, 2017, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that the landlord handed him a copy of the landlord's dispute resolution hearing package on January 18,

2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. The landlord also confirmed that she was handed a copy of the tenant's dispute resolution hearing package on January 12, 2018. I find that this package was duly served to the landlord in accordance with section 89 of the *Act* on that date. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the commencement of the hearing, I noted that in the time available to conduct this hearing, I would concentrate on considering evidence and testimony relating to the primary issue in dispute, the landlord's 1 Month Notice. If the tenancy were to continue and we did not have time to hear all of the evidence, the Residential Tenancy Branch's (the RTB's) Rules of Procedure allow me to sever those issues that were not central to the primary aspect of the application, to be pursued in a future application for dispute resolution as the need arose. In this 51 minute hearing, there was only sufficient time to consider those aspects of the tenant's application to cancel the landlord's 1 Month Notice. In accordance with Rule 2.3 of the RTB's Rules of Procedure, I dismiss the remainder of the tenant's application with leave to reapply.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

#### Background and Evidence

On August 23, 2016, the parties signed a Residential Tenancy Agreement for the tenant's rental of a bachelor suite in a building housing many senior citizens. This month-to-month tenancy for this subsidized rental unit was entered into after a local community service agency approached the landlord with a proposal to provide housing for the tenant while it provided a range of supportive services to the tenant. Although the total monthly rent is \$565.00, the tenant's portion of the monthly rent is set at \$320.00, payable in advance on the first of each month. The tenant's portion of the rent is paid directly to the landlord by the Ministry of Social Development and Poverty Reduction. The landlord continues to hold the tenant's \$282.50 security deposit.

Both parties entered into written evidence copies of the 1 Month Notice, requiring the tenant to end this tenancy by January 31, 2018. In that Notice, the landlord cited the following five reasons for the issuance of the Notice:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...*

Although the landlord gave undisputed sworn testimony that illegal drug use is occurring in the rental unit and that the tenant's mother is an illegal substance abuser, the landlord was unable to identify any proof that illegal activity is occurring at the rental unit. As such, the landlord's testimony and evidence focussed on the remaining four reasons identified in the 1 Month Notice.

The landlord supplied written evidence and sworn testimony that problems began to emerge with this tenancy when the tenant's mother became homeless and started staying with the tenant. The landlord also maintained that at one point a friend of the tenant's was also staying in the rental unit. Since the tenant's mother began staying with him, the landlord maintained that the tenant has stopped seeing the support case workers assigned to him and may have discontinued taking his medications. The landlord provided written evidence and sworn testimony that there have been frequent disturbances originating in the tenant's rental unit, where arguing, fighting and expletive filled disputes have been upsetting and disturbing to other residents in this shared multi-unit rental building. The tenant and his mother confirmed that the tenant has called the police to attend on three occasions as on those occasions he sought police assistance to have his mother removed from his rental unit. At the hearing, the tenant assured me that he and his mother have more recently been getting along very well.

The landlord gave undisputed sworn testimony that the agreement that BC Housing has with providers of subsidized housing prevents a second person from living in a bachelor suite. Since this rental unit is in a social housing building under a formal agreement with BC Housing, the landlord maintained that there is no flexibility to allow more than one person to live in this type of rental unit. The landlord alleged that at times there have been as many as three people living in the tenant's rental unit

The first section of the tenancy agreement notes as a “Material Covenant” that the landlord had entered into an agreement with the BC Housing Management Commission which restricted the use of this property to social housing. The landlord also referenced the following sections of the rental agreement with the tenant entered into written evidence by the landlord:

*5. Senior Citizens and Persons with Disabilities*

*Pursuant to its aforementioned agreement with the Commission, the landlord has selected the tenant on the basis of the number of tenants and occupants and the tenant's and occupant's income and assets. Any change in the number of tenants and occupants is material and of great importance to the decision of the landlord to continue or terminate the tenancy. It is a condition of this Tenancy Agreement that in the event of a change in the number of tenants or occupants in the premises the landlord shall have the right to terminate this Tenancy Agreement. The tenant agrees to notify the landlord promptly of any change in the number of tenants or occupants in the premises...*

*The tenant covenants that the named persons on this agreement shall be the only occupants during the term of this Tenancy Agreement unless the landlord agrees in advance IN WRITING to other person becoming tenants...*

As the landlord maintained that the tenant had allowed an unreasonable number of occupants to live in the rental unit, the landlord also made specific reference in her sworn testimony to section 23 (d) of the tenancy agreement, which reads as follows:

*23 Occupants and Guests...*

*(d) The landlord has selected the tenant partly on the basis of the number of occupants in the tenant's household. The tenant agrees that only the person named at the beginning of this tenancy agreement have the right to live as residents in the rental unit during the term of this tenancy, unless the landlord otherwise consents in writing. The tenant agrees to notify the landlord promptly of any change in the residents in the rental unit. The number of tenants in (sic in original) a material term of this tenancy, and the landlord may end this tenancy if: (i) the tenant fails to report a change in the number of residents in the rental unit; (ii) the number of residents in the rental unit is unreasonable; or*

*(iii) the number or family make-up of the residents violates the landlord's Operating Agreement with the federal or provincial government...*

I also note that section 23(c) of the tenancy agreement establishes the following process for identifying a potential breach of the number of occupants and guests in the rental unit:

23 (c)

***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 through arbitration under the Residential Tenancy Act.***

(emphasis in original)

At the hearing, the landlord said that the landlord convened a meeting with the tenant, his mother, and representatives of the agency that had been providing support to the tenant at the beginning of this tenancy shortly before December 25, 2017. The landlord gave undisputed sworn testimony supported by written evidence that the tenant's mother became very disruptive at that meeting, left the meeting and created problems in the lobby of the assisted living building where the landlord's office was located. Without any further options to try to reduce the number of occupants of this rental unit to the limit allowed by their social housing agreement with BC Housing, and as complaints about noise, arguing, fighting between the tenant and his mother, substance abuse, and concerns about drug paraphernalia continued, the landlord issued the 1 Month Notice on December 27, 2017.

During the hearing, the tenant's mother maintained that the tenancy agreement was confusing and contradictory and that the provisions around the number of occupants allowed to live in the rental unit contravened the *Act*. The tenant's mother asserted that there had never been more than two people living in the tenant's rental unit at any one time, but agreed that she now lived with her son. She claimed that there was some type of provision whereby if she lived in the rental unit with her son for more than three weeks that she became a tenant.

During the hearing, the tenant's mother also confirmed that she walked out of the December 2017 meeting because the landlord upset her so much. She said that she used expletives at that meeting and did not deny or dispute the landlord's claim that she caused a disturbance afterwards. She also admitted freely, as did the tenant, that they

raised their voices in arguments with one another and did not dispute that others in the building would have heard them arguing.

The tenant's mother maintained that each time the tenant told her to "get out" of the rental unit and called the police to make this happen, this followed from her raising with him the likelihood that others in this rental building were stealing cigarettes or money from him.

The landlord asked the tenant whether there was any evidence of theft of his property prior to his mother moving into the rental unit. The tenant confirmed that the problems with the theft of his property only surfaced after his mother began living with him.

### Analysis

A landlord may end a tenancy for cause pursuant to section 47 of the *Act* if any of the reasons cited in the 1 Month Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *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;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at significant risk;*

*(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...*

*(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property...,*

The tenant's mother correctly noted that the tenancy agreement itself cannot establish terms that are unconscionable or contravene the *Act*. For example, section 5 of the *Act* establishes that parties cannot contract out of the *Act*. Similarly, section 7 of the *Act* prevents terms in a tenancy agreement that are either unclear or unconscionable from having any legal effect.

In this case, I have considered the claim by the tenant's mother that the provisions contained in the tenancy agreement contravene the *Act*. I find that the tenancy agreement contains no such provisions that in any way contravene the *Act*. In this regard, section 23(c) of the tenancy agreement even outlines the process by which disputes regarding the number of occupants in a rental unit could be discussed at a meeting with the tenant, and in this case the tenant's support case workers, which occurred shortly before December 25, 2017. Rather than addressing the landlord's concerns and the very clear direction provided in the tenancy agreement that prevented the tenant from allowing anyone other than him to reside in the rental unit without the landlord's written permission, the tenant continued to allow his mother to live with him. Section 23(c) of the tenancy agreement also correctly notes that any decision as to whether the number of people residing in the rental unit constitute an unreasonable number of occupants is to be considered by way of arbitration under the *Act*.

Both the tenant and his mother freely admitted that the tenant's mother now resides with him in the tenant's bachelor suite. Although I have given the statements by the tenant and his mother careful consideration, no evidence was provided that would support the tenant's mother's claim that anyone staying in the rental unit for more than three weeks somehow became a tenant of the landlord. The tenancy agreement specifically and repeatedly states that this type of housing requires the landlord's approval to add another resident to the rental unit. In this case, the landlord has supplied convincing evidence, supported by the wording of the tenancy agreement itself, that the landlord's agreement with BC Housing prevented the landlord from allowing any more than one person to live in a bachelor unit.

Separate from the wording of the tenancy agreement and the "Material Covenant" outlined in section 1 of that agreement, I also find that the landlord has a sound basis to consider any more than one tenant residing in a bachelor rental unit as an unreasonable number of occupants of that rental space. A bachelor unit is not designed to accommodate two people who require separate beds.

For these reasons, I find that the landlord had valid grounds for issuing the 1 Month Notice on the basis that there were an unreasonable number of occupants in the

tenant's rental unit. As such, and as the landlord's 1 Month Notice met the requirements as to form and content of section 52 of the *Act*, I dismiss the tenant's application to cancel the 1 Month Notice and allow the landlord to obtain an Order of Possession to take effect at the end of the current rent period, March 31, 2018.

Since I have found that there are an unreasonable number of occupants in this rental unit, there is no need to consider any of the other grounds cited in the landlord's 1 Month Notice. However, given the nature of this dispute and the candid admissions by both the tenant and the tenant's mother as to the extent to which the tenant has been prompted to call for police assistance when their arguments have escalated, I feel compelled to also make additional findings. I find that the landlord had ample reason to end this tenancy because the tenant and his mother who he has allowed to live with him have significantly interfered with or unreasonably disturbed other occupants in this building and the landlord's representatives. In this regard, I rely on the admissions by the tenant and his mother of the frequent arguing and disputes they have, leading to repeated calls from the tenant to the police to remove his mother from the rental unit. I find that these behaviours and actions have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

### Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice and allow the landlord's application for an Order of Possession based on the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on March 31, 2018. Should the tenant and any occupant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of the tenant's application is dismissed with 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: March 09, 2018

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Residential Tenancy Branch