



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, RP, FFT

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (Notice), a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make necessary repairs to the rental unit, and for recovery of the filing fee paid for this application.

The above noted tenants and the landlord attended the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, each party confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### *Preliminary matter-*

I have determined that the portion of the tenants' application dealing with a request for a monetary order for compensation or loss and for an order requiring the landlord to make repairs to the rental unit are unrelated to the primary issue of disputing the Notice. As a

result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and will decide on that severed portion at the end of this decision.

The hearing proceeded only upon the tenants' application to cancel a Notice to End Tenancy for Cause.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and to recovery the filing fee paid for their application?

#### Background and Evidence

The landlord submitted a copy of a written tenancy agreement listing applicants JB and MLB, along with another party, SR, as tenants. The tenancy started on May 1, 2017, for a fixed term through April 30, 2018. The beginning monthly rent was \$2,200.00 and the tenants paid a security deposit of \$1,100.00.

The landlord said that he served the tenants with the Notice on October 23, 2019, by attaching it to the tenants' door. The effective move-out date listed was November 23, 2019. The landlord submitted a copy of the Notice.

The cause on the Notice claimed by the landlord was that the tenant had assigned or sublet the rental unit without the landlord's written consent.

In support of the Notice, the landlord submitted the following oral and documentary evidence:

That during the course of this tenancy, one of the original tenants, SR, vacated the rental unit without notice. He then allowed JB, his main tenant contact, to move another couple into the rental unit to help out with rent. JB filled out a tenant form to provide the new couple's contact information.

Then that new couple moved out of the rental unit and then on June 4, 2019, JB informed him that his brother, CL, and wife, TT, were moving into the rental unit, again filling out a form with their contact information. He understood that all subsequent occupants of the rental unit were roommates, as CL had referred to himself as a roommate.

He confirmed that he sometimes received monthly rent, or portions of the monthly rent from CL or TT, as JB said he needed help with the monthly rent. There has never been any tenancy agreement with CL or TT and there was never an assignment.

On October 22, 2019, he received a report from his property manager that an unknown, Chinese woman had emailed them about a leaky faucet in the rental unit, saying she was not going to pay rent. His property manager informed him that the woman was residing in the rental unit.

He attended the rental unit that day and observed a Chinese man and woman loading a mattress into a car. When he went to the rental unit on the 3<sup>rd</sup> floor, the door was open and he observed a drape hanging from the ceiling dividing the foyer from the living room. The property manager also observed the Chinese woman washing her car at the building and using the outside taps.

The property manager also said the Chinese woman “accosted” the property manager on October 22, dressed in her pajamas, demanding to know when the leaky faucet was going to be fixed.

There were also sticky notes with instructions left throughout the rental unit, suggesting that a non-resident lived there. These instructions were for use of the washing machine, dishwasher and the WIFI password.

On November 7, 2019, he received an email from JB who assured him the rental unit was no longer occupied and that the Chinese woman would no longer be there. JB provided permission to enter the rental unit.

The landlord submitted copies of photos of the Chinese woman in the rental unit, a mattress on top of the car, the interior of the rental unit, and emails between the applicants and the landlord.

*Tenants’ response-*

In response to the landlord’s evidence and in support of their application seeking cancellation of the Notice, the tenants submitted the following oral evidence:

*Tenant TT's relevant response-*

That she and CL left the rental unit on August 3, 2019, and returned on or about November 10, 2019, due to her short-term job assignment in another city.

The Chinese woman at the rental unit was her father's girlfriend, and they had left the keys with her father so that they could check on the rental unit in their absence. They were concerned about the leaky faucet due to flooding and utility costs concerns.

That her father and his girlfriend may have stayed in the rental unit occasionally but did not move in and did not sub-let the rental unit.

The tenant provided a copy of an MSP letter to her dad's girlfriend, showing her address to be that of her father's.

The tenant said she and CL are now back and residing in the rental unit.

*Tenant JB' relevant response-*

That he vacated the rental unit on October 3, 2019, and was not aware that anyone had been checking in on the rental unit. He said that his wife, MLB, vacated quite some time ago and he has always had roommates as a result.

The tenants' documentary evidence included a written response and text and email messages.

Analysis

Based on the foregoing, relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenants disputed the One Month Notice in accordance with the timeline provided for pursuant section 47 of the Act, the burden of proof reverts to the landlord to prove that the One Month Notice is valid and should be upheld. If the landlord fails to prove the One Month Notice is valid, it will be cancelled, and will have no force or effect.

In this instance, the burden of proof is on the landlord to prove the tenants had assigned or sublet the rental unit without the landlord's written consent.

After considering all of the relevant evidence submitted for this hearing, I find that the landlord has provided sufficient evidence to prove the cause listed on the Notice.

While JB said he vacated the rental unit on October 3, I find there to be insufficient evidence that he did. If that had been the case, I question why TT and CL gave the keys to the rental unit to TT's father to check on the rental unit in their temporary absence. Nonetheless, the undisputed evidence is that the original tenants, JB and MLB, have vacated the rental unit, leaving applicants TT and CL in place.

I find insufficient evidence to show that the landlord has ever given written consent to have this tenancy assigned to TT and CL, and the landlord claimed without dispute that on the day he issued the Notice, that JB, the remaining tenant on the written tenancy agreement, had vacated.

Additionally, I find there is insufficient evidence to show that JB and MLB entered into a sublease agreement with TT and CL. This is an agreement between the original tenant and the sub-tenant, for a period shorter than the term of the original tenant's agreement, allowing the original tenant to move back into the rental unit. There is no contractual agreement between the landlord and the sub-tenant.

A sub-let is temporary and in order for a sublease to exist, the original tenant must retain an interest in the tenancy.

Guidance for my consideration of this issue comes from Tenancy Policy Guideline 19.

Also, Tenancy Policy Guideline 13 provides as follows:

### **Occupants**

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

In this case, the original tenants, JB and MLB, allowed the applicants, TT and CL, to move into the premises and share rent. A new tenancy agreement with the owner/landlord of the rental unit to have these applicants added as co-tenants was

never entered into. Therefore, I find the applicants, TT and CL, are occupants as defined under the Policy Guideline and not tenants and therefore have no rights or obligation under a tenancy agreement.

Further, in this case, as the originally listed tenants, JB and MLB, have vacated the rental unit, this tenancy has ended, by section 44(1)(d) of the Act.

Due to the above, I find the landlord submitted sufficient evidence to demonstrate that the original tenants assigned or sublet the rental unit to applicants TT and CL, without the landlord's written consent.

I therefore dismiss the tenants' application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the evidence, and therefore, enforceable.

As I have dismissed the tenants' application, I decline to award them recovery of the filing fee.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession of the rental unit effective **December 31, 2019, at 1:00 p.m.** as the landlord provided no evidence that the monthly rent for December 2019 had not been paid.

The order of possession is included with the landlord's Decision. Should the applicants/tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The applicants/tenants are advised that costs of such enforcement, including bailiff fees, are recoverable from them.

I note that as I have determined that TT and CL are occupants and not tenants, I have only listed only the applicants and original tenants, JB and MLB, on this order of possession of the rental unit as they have legal standing in this matter.

As I have granted the landlord an order of possession of the rental unit, I dismiss the portion of the tenants' application seeking an order for repairs to the rental unit, without leave to reapply, as the tenancy is ending.

I dismiss the portion of the tenants' application for a monetary order for compensation or loss, with leave to reapply.

### Conclusion

For the reasons stated above, the tenants'/applicants' application seeking cancellation of the Notice is dismissed, without leave to reapply.

The landlord has been issued an order of possession of the rental unit, effective December 31, 2019.

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: December 18, 2019

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Residential Tenancy Branch