



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the landlord's One Month Notice to End tenancy for Cause (the Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing. The landlord was assisted by advocate SA, the tenant was represented by advocate LY. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on July 15, 2019. Rent is \$1,350.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$525.00 was collected and the landlord still holds it in trust. Two residential tenancy agreements were submitted into evidence. The first one was for a fixed term from July 15, 2019 to September 30, 2019 and the second one is a periodic tenancy from October 01, 2019 on.

Both parties also agreed the Notice was received on June 27, 2020. This application was filed on July 06, 2020.

A copy of the Notice was provided. The Notice is dated June 27, 2020 and the effective date is July 31, 2020. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has:
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

The details of cause specify:

[tenant] rented my suite starting mid-July (15<sup>th</sup>) with the understanding that it was for 1 person only. She mentioned she would be looking after her mother's dog for 6 weeks. The mother came to stay in Oct. on, there were numerous excuses + promises from [tenant] re: when her mother would be leaving. Finally at the beginning of Feb. I wrote a document stating that the rental was for one person only and Melissa mother must leave by the end of the month. Melissa signed it. I was due to go on a trip Feb 26, and when I returned March 9, Melissa had left for the US and her mother was here. I had to self isolated because of Covid but intended for the mother + daughter to leave but before I could serve the notice, the ban came into effect. The mother has been trying to gain tenancy by applying for the supplement and I can not accept it, or rent, as she is not my tenant. I am evicting [tenant] for breach of our rental agreement and 'subletting' without permission or assigning the suit/sharing with her mother without approval. It has been very stressful for me

The landlord affirmed occupant LY was authorized to stay in the rental unit as a guest from October 01 to November 15, 2019, LY never left the rental unit and offered paying rent but the landlord refused receiving it, as LY is not the tenant. Tenant MJ left the rental unit on March 07, 2020 and has not been living in the rental unit since.

LY stated she has been in the rental unit since October 09, 2019 and she has been the only occupant in the rental unit since November because the tenant's dog had a surgery and the tenant needed to provide care for the dog. LY denied she ever asked to become a tenant and said she could not leave the rental unit because of Covid. LY also stated the landlord did not raise any issues against her stay in the rental unit after the period from October 01 to November 15, 2019. LY affirmed MJ has her belongings in the rental unit and from November 15, 2019 to March 2020 MJ visited the rental unit but did not live there. LY also argued MJ is overseas since March 2020 in a place safe from the pandemic and it is dangerous for MJ to drive back home now because of Covid.

The periodic tenancy agreement signed on July 18, 2019 indicates there is no addendum. A one-page hand-written document dated February 01, 2020 states:

[tenant] agree that my mother LY will vacate my rented apartment at [tenancy address] on or before February 29, 2020 permanently. No other visitors or subletters will be allowed without permission from the landlord for any length of time beyond one night per month.

If the suite is shared beyond the agreed date of Feb 29, 2020, both occupants will be subject to a 10-day eviction notice.

The suite is for one person only.

LY stated the tenant did not sign the above-referenced document. The landlord confirmed the document was signed by the tenant.

A document dated July 16, 2020, signed by tenant MJ, states:

Please understand that due to the Covid-19 Pandemic I am currently unable to safely return to [anonymized]. Further, the BCCDC quarantine requirements in effect upon re-entry, make it essential that I have my residence and belonging available to me.

### Analysis

As the tenth day to dispute the Notice was July 07, 2020 and the tenant filed this application on July 06, 2020, I find the tenant disputed it within the time frame of section 47(4) of the Act.

Based on the parties cohesive testimony, I find the landlord authorized occupant LY to live in the rental unit up until November 15, 2019 and LY has been continuously living in the rental unit since October 09, 2019.

The parties provided conflicting testimony about signing the document dated February 01, 2020. I find the tenant's signature on both tenancy agreements submitted into evidence, the document dated July 16, 2020 and the document dated February 01, 2020 to be very similar. The tenant failed to provide evidence that her signature is forged. As such, I find the tenant signed the document dated February 01, 2020 and was aware the rental unit could not be sublet or assigned without the landlord's written consent.

Further to that, section 34 (1) of the Act states: "Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit."

Residential Tenancy Branch Policy Guideline 13 establishes that:

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause.

Furthermore, Residential Tenancy Branch Policy Guideline 19 states:

Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.  
[...]

Under s. 34 of the Residential Tenancy Act, a tenant must not assign a tenancy agreement unless the landlord consents in writing. A landlord must not unreasonably withhold consent if the tenancy agreement has six months or more remaining in the fixed term. (By implication a landlord has the discretion to withhold consent, without regard to reasonableness, in the case of a fixed term tenancy agreement with less than six months remaining). The Act does not specifically refer to month-to-month (periodic) tenancies.

Based on the LY's testimony and the document dated July 16, 2020, I find the tenant is no longer living in the rental unit and occupant LY has been the only person living in the rental unit since March 07, 2020. Further to that, the document dated February 01, 2020 establishes the landlord did not authorize assigning or subletting the rental unit. Thus, I find the tenant attempted to assign the rental unit without the landlord's written consent.

Section 47 of the Act allows a landlord to end a tenancy for cause:

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

[...]

(d) the tenant or a person permitted on the residential property by the tenant has:  
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

[...]

(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;

[...]

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34

I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(i) of the Act.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on July 31, 2020. I dismiss the tenant's application without leave to reapply.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy and the tenant's application is dismissed, I must consider if the landlord is entitled to an Order of Possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an Order of Possession effective two days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the Order of Possession.

### Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order**. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 10, 2020

---

Residential Tenancy Branch