



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Raamco International Properties Canadian  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, AS

### Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on May 31, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and allowance for subletting or assigning the tenancy. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 28, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing. At the outset, the landlord confirmed they received the prepared documentary evidence of the tenant. The landlord confirmed they sent their own documents as evidence to the tenant who confirmed the same. On this basis, the hearing proceeded.

### Preliminary Matter

This dispute arose because of a problematic situation involving a guest of the tenant. The landlord submitted they had trouble with this guest’s behaviour. There was no sub-tenancy approved by the landlord. This is part of the basis for the landlord serving the One-Month Notice discussed further below.

The tenant advised in the hearing that this guest had moved out since they filed this Application. The situation is such that the tenant anticipates the sub-tenant will not return, being under a specific no contact order from the court. Because of this situation and the facts presented, I dismiss the portion of their Application wherein they sought allowance for subletting or assignment.

### Issue(s) to be Decided

Is the tenant entitled to an order to cancel the One Month Notice pursuant to s. 47 of the *Act*?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

### Background and Evidence

The landlord provided a copy of the tenancy agreement in their evidence. It shows the tenant and landlord signed it on June 1, 2018 for the tenancy starting on that date. The rent was \$840 initially and increased to \$860. The first page of the document notes that the tenant agreed to an additional \$100 for rent for each additional tenant added.

Clause 13 of the agreement notes: “A person. . . who, without the landlord’s prior written consent, resides in the rental unit in excess of fourteen cumulative days. . . will be considered to be occupying the rental unit contrary to this Agreement.”

In their evidence, the landlord provided copies of breach notices they issued to the tenant:

- September 1, 2018: notifying on an unauthorized guest in the suite – police attended to have this person removed. The landlord noted this was “a last warning of eviction.”
- April 21, 2021: notifying the tenant that the “unauthorized occupant” was to permanently vacate immediately. The writer stated this was a “material breach of your tenancy agreement.” The writer also noted other resident complaints regarding noise.

The landlord also provided incident reports from May and June 2021. These give detail on incidents involving the tenant guest, including “yelling” and belligerent behaviour. One incident involved profanity and direct confrontation with one other resident. A different resident also described “loud yelling for extended period”, with good reason to believe it emanated from the tenant’s own rental unit.

Both parties provided a copy of the One-Month Notice. This shows the landlord signed the document on May 25, 2021, for the intended move-out date of June 30, 2021. The indication on page 2 is that they served it by attaching a copy to the door of the rental unit.

On page 2 of the document, the landlord provided the reasons for giving the notice:

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

The landlord noted section 13 of the agreement, and “Tenant has an unauthorized occupant living in the suite.”

In the hearing the landlord outlined their version of the history involving the tenant’s guest. This is as set out in the two letters notifying the tenant as set out above, beginning in 2018, then resuming with the guest’s return in 2020. They acknowledged that the tenant was taking steps to cease contact completely with this guest; however, they noted their concern that the tenant is unable to control the situation. They reiterated the seriousness of the incidents.

The tenant responded to say the guest was in dire circumstances elsewhere in the province in mid-2020. This led the tenant assisting the guest by having them stay at the rental unit, with the intention being a short-term visit as allowed by the agreement. Public health matters forced the guest to stay and according to the tenant “[they] behaved for the first six months.”

Eventually the court implemented a no-contact order, and then the guest departed on August 4, 2021. The tenant notified the landlord of this and provided a copy of that court order. This stipulates that the guest is not allowed near the building, and if they do attend the police will remove them. This happened one time on August 11.

The tenant specified in the hearing that the guest’s visit in August was a breach of four conditions on the no-contact order. Because a combination of conditions is in place, the penalty for a breach is severe. When the guest visited on August 11, it was the tenant who called the police. This led to charges which are the subject of an upcoming court date; therefore, the severity of the incident and the breaches of the no-contact order are in place and definitely have an impact.

The tenant is aware that the guest is now living elsewhere in BC and has their own abode. The tenant also presented their strong personal reasons for not having the

guest return to the rental unit or property in any capacity. They also reiterated they have always been a good tenant with rental payments and stated there is a very difficult housing market presently.

The landlord responded by reiterating that these are all things they have heard before in regard to the tenant's guest. There are no assurances that the tenant's guest will not show up again.

### Analysis

The *Act* s. 47(1)(h) provides that a landlord may end a tenancy if the tenant has failed to comply with a material term of the agreement, and not corrected the situation within a reasonable amount of time.

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord spoke to the reasons in oral testimony; however, I find there is sufficient evidence that justifies my cancellation of the One-Month Notice.

A material term is one that the parties both agree is so important that the most trivial breach of the that term gives the other party the right to end the agreement.

The Residential Tenancy Branch developed a Policy Guideline 8, on *Unconscionable and Material Terms* that gives a statement of the policy intent of the legislation. This provides that the party alleging a breach must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline must be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

From the evidence presented, and with strict adherence to what is set out in the policy guideline, I find the landlord did not specify a deadline date to the tenant. The only date reference appears in the letter to the tenant dated April 21, 2021; this only sets out that the landlord will inspect the unit on June 3. Though the letter does identify this as a "material breach", it does not provide that the tenancy will end if the problem was not fixed.

Aside from this, the landlord did specify that there were complaints from other residents. In particular this is noise and fighting in the rental unit. The letter also mentions past police intervention. I find this is sufficient to notify the tenant of complaints ongoing; however, this is not indicated as one of the reasons on the One-Month Notice.

Aside from the issues of correctly identifying a material term, circumstances that arose after the landlord issued the One-Month Notice are more significant. After the landlord issued the One-Month Notice on May 25, 2021, some time passed before a serious event led to a no-contact order for the guest. I view this as a substantial development that effectively eliminates the ongoing source of the problem. Based on their testimony and explanation of the situation, I find the tenant credible that a no-contact order is firm, and they will not welcome the problematic guest back to the rental unit. Further, the important term of the no-contact order is that the guest must not appear anywhere near the property. The tenant's representative made the very important point that any other resident or the landlord may contact police if any term of the no-contact order is violated by the guest.

I find this all stands as an effective barrier against future incidents that other residents found disturbing. Though the landlord feels the situation was similar in the past, and the tenant had the guest in the rental unit again, I distinguish the past situation as different in that there was no order prohibiting contact in the past.

I am satisfied the problem has been effectively eliminated. The tenant is aware that the problem cannot continue. Though they had no control of the actions of the guest in the past, there is now an effective control order in place to prevent any future incidents. This eliminates both the concern of an unauthorized guest staying in the rental unit, as well as the ongoing disturbances to other residents.

In sum, circumstances have changed. My finding is that this warrants cancellation of the One-Month Notice and the tenancy shall continue.

Conclusion

For the reasons above, I order the One-Month Notice issued on May 25, 2021 is cancelled and the tenancy remains in full force and effect.

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: October 6, 2021

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Residential Tenancy Branch