



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ksan House Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OPC, FFL

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 47.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing to pursue their claim. As a result, I dismiss the Tenant’s application. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions. It is noted that the last name of the Tenant is different on the applications of the Parties. The Landlord clarifies that the Tenant has gone by either last name in the past.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

### Background and Evidence

The tenancy started in 2000. Subsidized rent of \$272.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$390.00. On February 8, 2022 the Landlord served the Tenant with a one month notice to end tenancy for cause dated February 8, 2022 (the "Notice"). The Notice sets out one reason: the tenancy has assigned or sublet the rental unit without the Landlord's written consent. No details for the reason were provided with within the Notice or attached to the Notice. The Tenants' daughter moved into the subsidized unit with the Tenant some time ago. The Tenant did not move out of the unit for any period while the daughter has been in the unit. The Tenant became deceased on May 31, 2022 and the daughter is still in the unit.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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. The Landlord's evidence does not substantiate that prior to the Notice the Tenant either sublet or assigned the tenancy as there is no evidence that the Tenant moved out of the unit either temporarily or permanently. I find therefore that the Notice is not valid for its stated reason, and I dismiss the Landlord's claim for an order of possession based on the Notice. As the Landlord has not been successful with its claim, I also find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

### Conclusion

The applications of each Party are dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 02, 2022

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Residential Tenancy Branch