



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANNAE HOLDINGS ULC  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, AAT, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on July 5, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- An order allowing access to the unit for themselves and their guests;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on November 24, 2022, and was attended by the Tenant, an agent for the Landlord A.G. (Agent), and legal counsel for the Landlord K.L. (lawyer). All testimony provided was affirmed. As the Agent and Lawyer acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) on behalf of the Landlord, and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being

muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

In their Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims are not sufficiently related to validity of the One Month Notice, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order allowing access to the unit for themselves and their guests;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice and recovery of the filing fee.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of a One Month Notice, and if not, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on April 1, 2011, and that the tenancy could continue on a month-to-month basis at the end of the fixed term on March 31, 2012. At the hearing the parties agreed that the tenancy is currently month to month. The tenancy agreement lists two tenants R.K.J., who is the Applicant, and J.S. At the hearing the parties agreed that J.S. vacated the rental unit in 2015 and is therefore no longer a tenant under the tenancy agreement. As R.K.J. is the only remaining tenant listed under the tenancy agreement, I have referred to them as the Tenant in this decision.

The Lawyer stated that the Tenant has an unauthorized occupant in the rental unit which is a breach of clause 13 of their tenancy agreement. The Lawyer stated that clause 13 is a material term of the tenancy agreement and that as the Tenant did not remove the unauthorized occupant after having been served with a breach letter in accordance with Residential Tenancy Policy Guideline (Policy Guideline) #8, the One Month Notice was served.

The One Month Notice in the documentary evidence before me is on a 2021 version of the Residential Tenancy Branch (Branch) form, is signed and dated June 27, 2022, has an effective date of July 31, 2022, and states that the reason for ending the tenancy is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given. In the details of cause section, the following was written, which I have reproduced exactly as shown on the One Month Notice:

Details of the Event(s):  
In mid April 2022 Tenant allowed his guest Christopher Roberts to mve into his apartment. Landlord immediately informed Tenant that Guest needed to apply for tenancy. On May 5, 2022 an Application for Tenancy was received from Guest. On May 10, 2022 the Application for Tenancy was declined due to a poor credit rating and a landlord reference that stated Christopher did not pay his rent, On this date Tenant was also notified by letter that a person not listed in paragraph 2 of our Tenancy Agreement who resides in the rental unit for more than fourteen cumulative days is considered to be a trespasser, We asked Tenant to move out guest by May 23, 2022, It was not done and on May24, 2022 we served Tenant a Caution Notice stating that he has failed to comply with material term in our Lease Agreement and needed to move guest out.  
On June 27, 2022, the guest, Christopher Roberts remains in the suite.

The Agents stated that the One Month Notice was put through the Tenant's mail slot on June 27, 2022, and at the hearing the Tenant acknowledged its receipt on or about that date.

The Tenant denied having another occupant in the rental unit and characterized the One Month Notice as part of a campaign of bullying and harassment against them by agents for the Landlord due to their status as a marginalized person, specifically a ".disabled, aboriginal, homosexual...". The Tenant stated that they are a long-term tenant of the building in good standing and that they have always paid their rent on time. The Tenant stated that due to their disabilities, they require extensive assistance with their daily living activities, and that C.R., the alleged unauthorized occupant, is one of the people who assists them, along with several family members. The Tenant argued that they have not taken issue with their sibling's attendance at the rental unit to assist them as they are a lawyer, and instead have targeted C.R. The Tenant stated that C.R. has never occupied the rental unit, as they live elsewhere, and that this whole situation started when A.G. witnessed them an C.R. taking clothing and small household items out of the building for donation to the downtown east side (DTES) after a fire that dislocated many DTES residents.

The Lawyer stated that A.G., who attended the hearing, learned in mid-April of 2022 that the Tenant had permitted an unauthorized occupant, C.R., in the rental unit. The Lawyer stated that the Tenant was advised that as C.R. had resided in the rental unit for more than 14 consecutive days, they were considered an occupant and would need to apply to be a tenant under the tenancy agreement if they wished to stay. The Lawyer stated that after several attempts to have C.R. apply to become a tenant under the tenancy agreement, C.R. finally applied on May 5, 2022. A copy of the application for tenancy was submitted for my review and consideration. The Lawyer stated that C.R.'s application for tenancy was ultimately denied due to poor credit and a reference from their previous landlord stating that they were evicted because they did not pay their rent. A copy of an Equifax credit report for C.R. was submitted for my consideration in support of the Landlord's position that C.R. did not have suitable credit. The Lawyer also pointed out that the credit report lists the rental unit address as the most recent address for C.R. as of April 2022.

The Lawyer stated that the Tenant was sent a warning letter on May 10, 2022, a copy of which was before me, advising them that they had until May 23, 2022, to remove C.R. from the rental unit or they would be jeopardizing their tenancy as this would constitute a breach of section 13 of the tenancy agreement, which is a material term. The Lawyer

stated that on May 24, 2022, the Tenant confirmed that they would not remove C.R. from the rental unit and a caution notice was issued to the Tenant, a copy of which was also submitted for my consideration. In the caution notice it states that despite having received the May 10, 2022, warning letter, C.R. was still residing in the rental unit and as such the Landlord has grounds under section 47(1)(h) of the Act to end the tenancy. The Lawyer stated that the One Month Notice was subsequently put through the Tenant's mail slot on June 27, 2022.

The Lawyer stated that the Tenant was provided adequate notice via the warning letter and the caution notice that they were in breach of a material term of their tenancy agreement and given adequate time to come into compliance with it. The Lawyer submitted and pointed to Policy Guideline #8, and argued that the warning letter and caution notice meet the requirements set out in Policy Guideline #8 for a breach letter. The Lawyer submitted that it is essential for a landlord to know who is occupying rental units at all times and argued that C.R.'s application for tenancy was not arbitrarily denied. The Lawyer stated that it was denied because C.R. had poor credit, as shown in the credit report, and because C.R.'s previous landlord had ended their tenancy due to non-payment of rent.

The Agent A.G. stated that the Tenant had lived in the building for 11 years without issue until C.R. began occupying the rental unit with them, at which point they were suddenly deemed to be a "bad" manager. A.G. stated that C.R. began acting out, arguing with the assistant manager, and threatening to sue, which has made life miserable and intolerable. A.G. also stated that they still see C.R. "pretty much every day" and that the Tenant confirmed with them that C.R. is still in the rental unit.

The Tenant denied acknowledging that C.R. resides in the rental unit and reiterated that C.R. has never lived there. The Tenant stated that C.R. only applied to be a tenant because the Landlord's agents were making the situation unbearable by constantly harassing C.R. and accusing them of trespassing, which made C.R. not want to continue assisting the Tenant with their daily living activities. The Tenant stated that as they require this assistance, they encouraged C.R. to simply apply to be a tenant, in the hopes that this would resolve the issue, even though C.R. did not live there and had no intentions of moving in.

The Tenant stated that A.G. mistook them moving items out of their rental unit for donation, as C.R. moving in, that A.G. yelled at them about it, and that they were served with a notice of inspection the following day, which they deemed retaliation. The Tenant

reiterated their position that they are being picked-on as a disabled indigenous member of the LGBTQ community, which they find deplorable.

A.G. stated that they have never witnessed C.R. assisting the Tenant, and that the Tenant does all their own laundry and shopping, which the Tenant denied.

### Analysis

Based on the documentary evidence and affirmed testimony before me, I am satisfied that the Tenant was served with and received the One Month Notice on June 27, 2022. As Residential tenancy Branch (Branch) records show that the Tenant filed their Application seeking cancellation of the One Month Notice on July 5, 2022, I therefore find that the Tenant disputed the One Month Notice in compliance with section 47(4) of the Act.

Section 47(1)(h) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Although the Tenant argued that C.R. is not an occupant of the rental unit and that the Landlord is simply discriminating against them as a person with disabilities, a visible minority, and a member of the LGBTQ community, I am not satisfied that this is the case. The Tenant provided only their own testimony in support of their position that C.R. is not an occupant of the rental unit and has a permanent residence elsewhere. In contrast, the Lawyer and Agent provided a credit report for C.R. listing the rental unit address as the most recent address for C.R. as of April 2022, as well as an application for tenancy at the rental unit completed by C.R. In reviewing these documents, I note that the previous address for C.R. shown in the credit report is also the address listed by C.R. in the application for tenancy as their address, which suggests to me that C.R. reported to either the credit bureau or one of their creditors in April of 2022 that they no longer resided at their previous address and now reside at the rental unit address. This timeline also coincides with the timeline provided by A.G. and the Lawyer for when the Landlord or their agents first became aware that C.R. was residing in the rental unit.

Although the Tenant argued that C.R. only completed the application for tenancy to avoid harassment and that they did not reside or plan to reside in the rental unit, I do not accept this argument. It does not make sense to me that C.R. would apply to be a tenant or co-tenant of the rental unit if they did not reside there or intend to reside there as they would become jointly and severally liable under the tenancy agreement and the

Act for things such as the payment of rent if their application was accepted. This also seems like an illogical solution to the issue, as if C.R. did not reside in the rental unit and maintained a permanent residence elsewhere as argued by the Tenant, verification of this should have been easy to provide.

When taken together, I find the affirmed testimony of the Agent A.G. that both C.R. and the Tenant have acknowledged that C.R. is an occupant of the rental unit, A.G.'s affirmed testimony that they see C.R. at the rental unit and building almost every day, C.R.'s application for tenancy/co-tenancy at the rental unit address, and the credit report for C.R. indicating the rental unit as their most recent address, sufficient to satisfy me on a balance of probabilities that C.R. is an occupant of the rental unit. I am also satisfied that clause 13 of the tenancy agreement, which prohibits additional occupants without the approval of the Landlord, is a material term as this is clearly stated in the clause. Finally, I am also satisfied that the Tenant received the warning letter and the caution notice and find that they meet the requirements of a breach letter for the purpose of section 47(1)(h)(ii) of the Act, as set out in Policy Guideline #8.

As a result, I therefore find that the Landlord has cause to end the tenancy under section 47(1)(h) of the Act by way of the One Month Notice, and I dismiss the Tenant's Application seeking its cancellation and recovery of the filing fee without leave to reapply. Pursuant to section 55(1) of the Act and as I am satisfied that the One Month Notice complies with section 52 of the Act, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit. Although the Lawyer sought an Order of Possession for November 30, 2022, or two days after service, I do not find that appropriate under the circumstances. Given the Tenant's testimony that they are a person with disabilities who requires assistance with daily living activities, the long duration of the tenancy, the lack of evidence before me that there are any serious health and safety concerns, the fact that the Tenant does not appear to have a history of unpaid rent, and the time of year, I find it would be unreasonable to expect the Tenant to vacate within 2 days or even by the end of this month. As a result, and pursuant to Policy Guideline #54, I therefore grant the Landlord an Order of Possession for January 31, 2023, pursuant to sections 55(1) and 55(3) of the Act. I also order that all rights and obligations under the tenancy agreement and Act continue until the tenancy is ended, including but not limited to the Tenant's obligation to pay rent and the Landlord's obligation not to unreasonably restrict access by the Tenant or persons permitted access to the residential property by the Tenant, to the building or the rental, as set out under sections 26 and 30(1) of the Act.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee is dismissed without leave to reapply.

Pursuant to sections 55(1) and 55(3) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on January 31, 2023, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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

Dated: December 14, 2022

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Residential Tenancy Branch