

## **DECISION**

Dispute Codes      CNC

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request to have a Notice to End Tenancy cancelled.

### Background and Evidence

On December 15, 2009 the bylaw enforcement officer for the city of Kelowna sent a letter to the landlord stating that the dispute property was an illegal secondary suite and that they had two alternatives, 1- decommission this week by removing the cooking facilities etc. or 2-apply for a rezoning permit.

On January 19, 2010, the landlords gave the tenant a Notice to End Tenancy stating the rental unit/site must be vacated to comply with the government order.

The landlords testified that:

- They determined that it was not possible to have the property rezoned due to the fact that there was already an other secondary suite on the property.
- Rezoning would also be impossible without getting a variance as there is no proper setback at the rental property.

- Rezoning to allow this number of units on one property would likely not be approved as it is not in the city's overall future plan for this area.
- They therefore attempted to get more time for the tenant to vacate however the City of Kelowna informed them that they would like the tenant out by March 1, 2010.

The landlords therefore felt they had no option but to give the tenant a Notice to End Tenancy.

The tenant testified that:

- He does not dispute that the landlords have been given an order from the City of Kelowna, however he had intended to stay in the rental unit at least until the end of his one year lease.
- He has a child in school in the area and feels it would be detrimental to move the child at this time.
- He is certainly willing to move, however would like more time.

The applicant is therefore requesting that this Notice to End Tenancy be cancelled.

### Analysis

It is my finding that the landlord has received an order from the City of Kelowna that requires the suite to be vacated, and therefore I will not set aside or cancel the Notice to End Tenancy. However it is also my decision that I will allow more time for the tenant to comply with the Notice to End Tenancy.

I have therefore issued an Order of Possession for the end of May 2010.

### Conclusion

This application is dismissed without leave to reapply and I have issued an Order of Possession to the landlords for 1 p.m. on May 31, 2010.

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: March 02, 2010.

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Dispute Resolution Officer