



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated June 15, 2012.

At the outset of the hearing, the Parties confirmed that they were each served with the others' documentary evidence and hearing packages (which include the Application for Dispute Resolution and Notice of Hearing). All of the documentary evidence has been reviewed by me. The Parties were also given an opportunity at the hearing to give their evidence orally, to have witnesses attend and to ask questions of the other party. All testimony was taken under oath or affirmation.

### Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

### Background and Evidence

This tenancy started in September of 2006. The current Landlords purchased the rental property in October of 2010. On June 15, 2012, the Landlords' agent served the Tenant in person with a One Month Notice to End Tenancy for Cause dated June 15, 2012 the sole ground of which alleges that the "rental unit must be vacated to comply with a government order."

The Landlord's agent said she served the Tenant with the One Month Notice after receiving a Memorandum from the City of Chilliwack dated June 6, 2012 which stated in part as follows:

"the Planning Department reviewed the file and has determined that due to the current zoning, monthly rentals of the suites are not permitted as stated in the CS2 zone. During the inspection the property representation informed me that the property owner has decided against rezoning the property; therefore, as stated above monthly rentals are not permitted. Continued non-compliance may result in fines being issued."

The Landlords' agent said after speaking with municipal officials, she did not believe it was possible to apply for a variance because she was only given two options by city officials; either rezone or remove the residential tenants from the property. The Landlords' agent also said she believes the zoning has been in place for some time but has not been enforced until recently.

The Tenant argued that the Memorandum from the City of Chilliwack did not constitute an Order requiring him to vacate the rental unit but rather was an internal memorandum from the City apparently forwarded to the Landlords explaining why their current monthly rentals did not comply with the by-law. In particular, the Tenant argued that the memorandum is not directed to the Landlord or Tenant, does not state that the Tenant must vacate and does not indicate a date by which the Landlord must comply. The Tenant also claimed that he does not believe the Landlords have investigated the possibility of a variance.

### Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords claim that a memorandum dated June 6, 2012 (reproduced in part above) constitutes an Order from the municipal government that the rental unit be vacated. However, I disagree and find instead that the memorandum instead constitutes an informal notice to the Landlords that their use of the rental property does not conform with the by-law and that until such time as it does, they may subject to fines. The memorandum does not require the Tenant to vacate the rental unit. In other words, it is up to the Landlords as to what steps they choose to take to comply with the City's letter such as for example, re-zoning or seeking a variance (if that is available), relocating their current tenants or continuing the same use and incurring fines.

In the absence of an Order from the City that clearly states that the Tenant must vacate the rental unit, the Landlord cannot rely on the extraordinary remedy of eviction as a means to comply with the by-law and avoid fines.

### Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated June 15, 2012 is cancelled and the tenancy will continue. 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: July 16, 2012.

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Residential Tenancy Branch