



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC, MNDC, OPL, FF

### **Introduction:**

The tenant has applied for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a one month Notice to End Tenancy.

The landlord applies for an Order of Possession, based upon the Notice.

### **Issue(s) to be decided:**

The notice has been given on the grounds that the rental unit/site must be vacated to comply with a government order. The tenant disputes the validity of the notice, and also questions whether this notice has been given in good faith. The tenant also claims compensation from the landlord based upon time off work and stress based upon a previous hearing.

### **Background and Evidence**

1. This tenancy began December 15, 2013. The tenants rent the upper portion of the home. There were tenants residing in the lower suite until May 31, 2013. The lower suite is presently vacant.
2. The current rent is \$1,200.00, payable on the 15<sup>th</sup> day of each month.
3. A one-month Notice to End Tenancy was given to the tenants May 14, 2013. The notice states that the rental unit/site must be vacated to comply with a government order.
4. The landlord testified that someone reported to the City of Vancouver that the lower suite in the premises was an illegal suite. An inspection was carried out by a City Inspector to determine the upgrading required to retain the secondary suite. In a follow-up letter dated May 10, 2013, and pursuant to the Vancouver Zoning and Development, Building and Electrical By-laws, a By-law Administrator for the City of Vancouver required the landlord to either:
  - a. Make application for the proper building permit and commence upgrading work for a secondary suite; or

- b. Vacate the unapproved lower floor suite, remove the kitchen and its cooking facilities, and restore the use of the building to a one-family building.
5. The landlord testified that he intends to do the necessary upgrades, and has obtained the required permit. The upgrading work will require the power to be shut off at times without warning, and the tenant must move out for safety reasons.
6. The tenant contends that the landlord has been trying to evict him for several months, and is harassing him. He also contends that there is no reason why he must vacate, as any work will occur in the lower suite.

### **Analysis:**

The tenants apply for resolution of a dispute in the tenancy at the above noted address, and request an order to cancel a One Month Notice to End Tenancy. The tenant also makes a monetary claim as against the landlord, for stress and expense related to a previous hearing.

Rule 1.2 states that the objectives of the Rules of Procedure is to ensure a consistent, efficient and just process for resolving disputes. In this regard, it is anticipated that any disputes filed in a single hearing will be related matters. The monetary claim is clearly unrelated. I have therefore determined pursuant to Rule 2.3 that it is appropriate to dismiss the monetary claim of the tenant, as that claims is unrelated to the key issue of the validity of the Notice.

When a landlord purports to end a tenancy for cause, the tenant must be given the proper One Month Notice to End Tenancy, and the reason for ending the tenancy must be one permitted under the Residential Tenancy Act. In this case, the notice is given pursuant to section 47(1)(k), which permits a landlord to end a tenancy by giving notice that a rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

To support the Notice, the landlord relies upon a letter of May 10, 2013 from the a By-law Administrator with the city of Vancouver. The letter requires that the unapproved lower floor suite be vacated. Nowhere however, does that letter require the vacancy of the upper suite, which is where the tenants reside.

The landlord testified that vacant possession is a safety concern and that power may be shut off. While that issue is not in dispute, it is not a fact related to the reason for the giving of the notice, and therefore is not a valid ground upon which this particular notice can be founded.

In the absence of any support that a government order requires the upper unit to be vacated, I find that the subject Notice to End Tenancy must be cancelled, and the tenancy continue.

As the notice is cancelled I need not address the tenant's allegation that the notice was not given in good faith.

The tenant may recover his filing fee from the landlord. As the landlord is unsuccessful, I decline to award recovery of the landlord's filing fee.

### **Conclusion**

I order that the Notice to End Tenancy dated May 14, 2013 be cancelled. This tenancy shall continue.

I further order that the tenant recover his \$50.00 filing fee from the landlord. The tenant is at liberty to deduct this sum from a future rental payment.

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: June 12, 2013

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Residential Tenancy Branch