



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Keefer Apartments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This was a hearing with respect to the tenant's application to cancel a two month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant participated with her representative and the landlord's representatives called in and participated in the hearing. As well as hearing the testimony of the parties, I heard evidence from a witness called by the tenant who is an employee of the City of Vancouver.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated October 23, 2013 be cancelled?

### Background and Evidence

The rental unit is a room in the landlord's rental property in Vancouver. The tenant has applied to dispute a two month Notice to End Tenancy served upon the tenant. The Notice to End Tenancy is dated October 23, 2013 and it requires the tenant to move out of the rental unit by December 31, 2013. The ground for the Notice to End Tenancy is that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant's objection to the Notice to End Tenancy is based in part upon the fact that this is the second Notice to End Tenancy that she has received on identical grounds. The landlord gave the tenant a similar Notice to End Tenancy In August, intended to be effective on October 31, 2013. The tenant applied to dispute the earlier Notice and it was the subject of a dispute resolution hearing on October 16, 2013. At the first hearing the tenant submitted that the rental property was governed by a housing agreement with the City of Vancouver and the landlord's conversion of one of the rental units for use as

a caretaker's suite would remove one of the low income housing units from the rental property and this would be contrary to the agreement with the City. In the decision dated October 16, 2013, the arbitrator cancelled the Notice to End Tenancy. He said in his decision that:

I find that in this matter the Act prescribes the landlord must not only act with good faith intention in respect to ending the tenancy – that is they must not have an ulterior motive for ending the tenancy - but, the landlord must only act to end the tenancy once they acquire any necessary permits or approvals as required by law. The evidence in this matter is that the landlord operates within the confines of an Agreement with the City authorized by a City by-law. On balance of probabilities, I prefer the tenant's evidence that the landlord has failed to provide evidence they meet the test established by Section 46 of the Act in respect to the landlord having *all the necessary permits and approvals required by law*, thus allowing the landlord to issue a valid Notice to End.

As part of the landlord's evidence in this proceeding, the landlord submitted a copy of its housing agreement with the City of Vancouver. The landlord also submitted a copy of an e-mail received from a supervisor at the City's Licenses and Inspections department. The e-mail message to the landlord was dated January 18, 2013 and it stated as follows:

There have been a few recent inspections on the property so we will compile an updated list of outstanding issues. This information will be forwarded to you next week. Regarding the work that is required under a Building permit, (name of building inspector) has agreed to process this as a "Field review" which will expedite the process, however drawings are required and (name of inspector) feels he has been very clear on that point.

With respect to the basement, we support your decision to have someone on site to manage the building but they will have to be located and reside in one of the existing approved units. If you have further questions please let me know.

The landlord testified at the hearing that there have been disturbances and illegal activities occurring in the rental property; because of these events the landlord decided to put a resident caretaker into one of the suites in order to manage the building. The landlord chose the rental unit because it was suitable for the intended use. The landlord said also that he chose the tenant's unit because of information that the tenant did not

live in the unit full-time and she was the most recent occupant to move into the rental unit.

The tenant testified that the landlord should not be able to allow a caretaker to occupy one of the rental units because the landlord signed an agreement with the City to provide 12 units of low income housing in exchange for a relaxation of the City's zoning and development bylaw and the use of the rental unit to house a caretaker would be a violation of the agreement with the City and of the City's Single Room Accommodation by-law.

The tenant acknowledged that there have been problems with the behaviour of other occupants living in the rental property, but the tenant submitted that the landlord should have the police deal with disturbances at the rental property rather than having a resident manager attempt to regulate and police the building.

The tenant referred to the provisions of the *Residential Tenancy Act*, in particular section 49 (6) of the Act, which provides that: A landlord may end a tenancy in respect of a rental unit *If the landlord has all the necessary permits and approvals required by law*, and intends in good faith, to do any of the following: (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property; (emphasis added). The tenant said that the landlord has not provided proof that it has permits to convert the unit and the e-mail from the City does not constitute the necessary permit or approval required.

The tenant referred to an administrative report from the City dated February 15, 2012. The report was concerned with a request to commence legal proceedings to compel the landlord to perform work to bring the rental property into compliance with City by-laws. The tenant noted that the landlord had created illegal suites in the rental property that were ordered to be removed. The tenant referred to a passage in the report that stated as follows:

Staff would be interested in discussing the potential to increase the number of suites in this building in order to address the need for affordable housing. Additional suites would also raise revenue for the Owners and address their concern that the shelter component of welfare rates do not provide enough income to sustain the building.

The tenant called a Mr. M.C., a City building inspector to testify on her behalf. The tenant referred to the above-quoted passage and asked whether the basement could be

converted into a caretaker's suite based on the City's interest in increasing the number of suites in the building. Mr. M.C. stated that the landlord had been compelled by the City to remove illegal suites from the basement of the rental property and there was no prospect that the landlord could now obtain approval to use the basement as a caretaker's suite. Mr. M.C. also testified that there was no permit or approval that was necessary or required from the City before the landlord would be able to use one of the existing suites for a resident caretaker's unit.

In the report from the City, the author also made the following comment:

In addition to the non-compliance related to the illegal suites, the Building By-law, the Standards of Maintenance By-law and the Housing Agreement, this building is frequently attended by the Vancouver Police Department. Over the last 2 years, members of the VPD have attended the building at least once every 2 weeks in response to problems at the building.

### Analysis

The evidence given at the hearing on December 18, 2013 and the documents submitted by the parties established that there are no provisions in the housing agreement between the landlord and the City that would preclude the use of a suite in the rental property as a caretaker's suite. The January 18, 2013 e-mail from a City employee provided confirmation that the City supports the landlord's decision to have an on-site manager in one of the existing approved rental units. It is apparent from the City's report that the City does not condone the regular attendance of the police at the building to respond to problems.

I find that the landlord has legitimate reasons for seeking to have a resident manager or caretaker living in the rental property. The tenant is inconvenienced by the Notice to End her tenancy and she does not want to move, but I find that the landlord has sound reasons for the decision to end the tenancy and I do not find that there is evidence that the landlord was not acting in good faith when it gave the Notice to End Tenancy to the tenant. The tenant complained at the hearing that she was not the newest tenant in the building and she disputed the landlord's remark that she was not living full-time at the rental unit, but the landlord is not obliged to apply any form of seniority determination to justify an otherwise legitimate decision to end the tenancy for landlord's use.

Conclusion

I find that the landlord has given the two month Notice to End Tenancy for landlord's use for a legitimate reason and in good faith. I therefore dismiss the tenant's application to cancel the Notice to End Tenancy dated October 23, 2013 without leave to reapply and I find that the tenancy will therefore end pursuant to the Notice to End Tenancy on the effective date of the Notice, which is December 31, 2013.

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: December 23, 2013

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Residential Tenancy Branch

