



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued December 20, 2014 (the "Notice") and to recover the filing fee.

The Landlord appeared on his own behalf and was assisted by a translator, J.Y. The Tenants were represented by R.C., father of A.D.C. and agent for both Tenants.

The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the amount he paid to file the application?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement dated August 19, 2014 which indicated that the one year fixed term tenancy began on August 31,

2014; rent was payable in the amount of \$3,600.00 per month; and, a security deposit of \$1,800.00 was paid on August 19, 2014.

The rental unit is a six bedroom home. Four other occupants reside in the rental home in addition to the Tenants; these occupants have been permitted in the rental home by the Landlord.

Introduced in evidence was a copy of the 1 Month Notice to End Tenancy for Cause issued December 20, 2014. The reason cited in the Notice was as follows:

- Rental unit/site must be vacated to comply with a government order.

(the "Notice")

Neither party provided testimony as to the service of the Notice. Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, the Tenants made their application on December 29, 2014: 9 days after the Notice was issued.

Also introduced in evidence was a letter from the municipal Bylaw Enforcement Officer to the Landlord dated December 15, 2014. This letter advised the Landlord that he attended the rental home and observed six unrelated persons residing in the property contrary to the local Zoning Bylaw; further, the writer advised the Landlord that he had until March 1, 2015 to reduce the number of unrelated occupants to a maximum of four. Finally, the letter cautioned the Landlord that failure to rectify the violation by March 1, 2015 would force the municipality to consider laying additional charges against the Landlord (the "December 15, 2015 Letter").

The Tenants advocate submitted that December 15, 2014 Letter was not an order as required by section 47(1)(k) of the Act. The Tenants' advocate further submitted that the Landlord had the option of applying for a secondary suite, or reducing the number of occupants not on the residential tenancy agreement and that in any case, the December 15, 2014 letter was not sufficient cause to end the Tenancy.

### Analysis

Section 47(1)(k) provides as follows:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

The Landlord submitted the December 15, 2014 letter in support of his position that the tenancy should end. I find that this letter is a warning, not an Order as required by section 47(1)(k). Further, I accept the evidence of the Tenant's advocate that the Landlord has other options available to rectify the alleged bylaw violation, and that the tenancy need not end to satisfy the requirements set out in the December 15, 2014 letter.

Accordingly, I find that the Landlord has failed to show that the rental unit must be *vacated* and I grant the Tenants' application to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Tenants, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of \$50.00 towards their next month's rent.

### Conclusion

The application is granted and the Notice is set aside. The Tenants are to be credited the filing fee as a one-time \$50.00 reduction in their next month's rent.

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: January 26, 2015

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Residential Tenancy Branch

