



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNR, MNSD, MNDC, FF

### Introduction

In the first application the tenant applies against both A.K. and R.K. seeking to cancel a one month Notice to End Tenancy served May 5, 2015 and which alleges that the rental unit must be vacated to comply with a government order.

Such a ground is a lawful ground for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

In the second application the landlord R.K. seeks to recover an order of possession pursuant to the Notice and for a monetary award for unpaid rent.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on balance of probabilities that there were good grounds for the Notice? Is the landlord entitled to unpaid rent?

### Background and Evidence

The rental unit is a two bedroom basement suite in a house. The landlords rent the upper portion to others, apparently the tenant’s father and sister.

The tenancy started in October 2010. There is no written tenancy agreement.

The attending parties agree that the rent was, until recently, \$900.00 per month, including utilities, due on the first of each month. The landlords hold a \$400.00 security deposit.

The landlord R.K. testifies that in her view the cost of electricity for the house was becoming too much, given the rents that were being paid. In January 2015 the landlords decided to remove electricity as a service included in rent, reduce this tenant's rent by \$32.20 as a result, and require the tenant to pay an additional \$70.00 per month as his one-third share of the electricity consumed by the house in total.

R.K. indicates that the \$70.00 figure was based on a one-third portion of \$210.00 per month, which was the average monthly consumption calculated from a five year power history.

As a result, the tenant's rent was increased from \$900.00 per month to \$935.00, effective in May 2015.

The tenant has not paid the \$35.00 increase for April or May.

R.K. testifies that she has not received rent for June.

Ms. R.K. testifies that the tenant caused a local government bylaw enforcement officer to attend the premises and as a result the basement suite has been declared an illegal suite.

She tendered a letter from the local government bylaw enforcement officer dated May 4, 2015.

The letter indicates the local government has received a complaint of an illegal secondary suite in the residence belonging to the landlords, which is zoned Single Dwelling House.

The letter included a '*Bulletin*' for the landlords, providing "options available to legalize or decommission an illegal secondary suite."

The bylaw enforcement officer's letter notes: "We would appreciate your cooperation and voluntary compliance" and to respond within 15 days indicating how the landlords intend to bring the property into compliance and that failure to respond in the manner requested "will result in the city pursuing alternative compliance options which may include fines and/or court actions."

The '*Bulletin*' was not included in the material presented at hearing.

The landlords issued the one month Notice to End Tenancy the next day, stating June 5, 2015 to be the effective date of the Notice; the date the tenant must leave. The same day they applied for a received a building permit to remove the stove and its wiring from the tenant's suite.

R.K. testifies that the bylaw enforcement officer told the landlords to issue the eviction Notice to the tenant.

The tenant testifies that utilities were included in his rent and the landlords should not be allowed to unilaterally change that. He thinks the one-third share for the basement suite is too much. He says that he cannot find another place to live.

### Analysis

The law in British Columbia regarding the rights and obligations of landlords and tenants is set out in the *Act*. In section 27, the *Act* sets out the law regarding a landlord's right to terminate or restrict a service or facility. Section 27 says,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The provision of electricity to a rental unit is essential to the tenant's use of the rental unit. Removing it or restricting it, either directly, or, as the landlords have done here, by indirect means, is contrary to the *Act*.

The *Act*, Part 3, also restricts the timing and grounds for rent increases imposed by landlords on tenants. The rent increase in this case is not in accord with the *Act* and is therefore not effective.

The landlords are not entitled to recover the \$35.00 increase for any months.

The landlords are owed rent that came due June 1, 2015 and I award them \$900.00 in that regard.

Regarding the eviction Notice, section 47(1)(k) of the *Act* provides that a landlord may end a tenancy on one month's notice if,

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

In my view, and after close study of the local government letter of May 4, 2015, there has not yet been an "order" that requires the rental unit be vacated. The letter indicates that the landlords must take steps to bring their premises into compliance with the bylaws. The letter indicates options to legalize or decommission an illegal secondary suite.

The letter requests cooperation and voluntary compliance. Reasonably that can only mean voluntary compliance with the local government bylaws. If it is voluntary compliance that is being requested then clearly nothing is being "ordered" at this point.

R.K. testified that the bylaw enforcement officer directed her to evict the tenant. That is not sufficient. By any reasonable standard, the "order" referred to in s. 47(1)(k), above, must be an order in writing or some other preserved format.

In result, the landlords have not shown at this hearing that the rental unit must be vacated to comply with an order of a municipal government authority.

For these reasons I find that the Notice to End Tenancy must be cancelled. The landlords are free to issue another, should the local government issue an order the compliance with which requires that the rental unit be vacant.

### Conclusion

The landlord R.K.'s application for a monetary award is allowed in part. There will be a monetary order against the tenant in the amount of \$900.00 for unpaid June 2015 rent. The landlord R.K. have the option of applying the security deposit in reduction of that amount but I will leave that decision to her.

The landlord R.K.'s application for an order of possession is dismissed.

The tenant's application to cancel the Notice is allowed. This tenancy will continue until it is lawfully ended in accordance with the *Act*.

As success is divided, I decline awarding recovery of any filing fee.

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 19, 2015

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Residential Tenancy Branch

