



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OLC,

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a Notice to End Tenancy for Cause issued on August 28, 2015 as well as an Order that the Landlord comply with the *Act*, regulation or tenancy agreement and in particular, that the Landlord complete the skirting around the rental unit, which is a self-contained cabin.

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

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

During the hearing the Landlord asked for an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*.

*Residential Tenancy Rules of Procedure* require that when a Tenant applies to cancel a notice to end tenancy the Landlord must present their evidence first as the onus is on the Landlord to prove the Notice should be upheld.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. If the Notice is cancelled, should the Landlord be required to install the skirting around the cabin?

### Background and Evidence

#### *LANDLORD'S EVIDENCE*

The Landlord testified that a month to month tenancy began February 1, 2015. Monthly rent is payable in the amount of \$600.00 and a \$300.00 security deposit was paid at the start of the tenancy.

The rental unit is a self-contained cabin on the Landlord's property. The Landlord testified that the property also contains a house in which is located a fully furnished suite where she resides on a part time basis, as well as another rental unit which is rented to another party.

The Landlord testified that when attending to a staircase on the adjacent property owned by the estate of her parents, she was advised by a zoning bylaw officer that the rental unit/cabin was illegal as she was only permitted to have two self-contained suites, not three. She further testified that the zoning bylaw officer told her to decommission the cabin.

The Landlord issued the Notice on August 28, 2015. The reasons cited in the Notice are that "the Rental unit must be vacated to comply with a government order."

In support, the Landlord submitted a letter from the municipality dated August 31, 2015 which reads as follows:

"...The permitted land uses and density for the property located at [address withheld] are laid out in Zoning Bylaw [number and date withheld for protection of privacy]. Parts 510 and 502 pertain to the general use provisions which affect all parcels within the bylaw area. Permitted gross floor area of auxiliary structures and maximum floor area of auxiliary dwellings are two such general use provisions.

In the case of [address of rental property] the maximum gross floor area of all auxiliary structures is 100 square meters. The maximum gross floor area of an auxiliary dwelling is 55 square metres.

[address of rental property] is within the Residential One (R1) zoning area. Part 601 states the primary use is residential in conjunction with a single family home. On parcels over 2000 square metres in size additional permitted uses are one auxiliary dwelling (limited in gross floor area to 55 m<sup>2</sup>), a bed and breakfast subject to Part [number withheld], and horticultural product sales auxiliary to one single family dwelling unit.

Additionally, Part 601(7) restrict the maximum dwellings per parcel to two (2). In the case of [address of rental property] a single family home and an auxiliary dwelling is permitted.

Please note the definition of *dwelling* used in Bylaw 310, 1987:

*“dwelling” means one or more rooms comprising a self-contained unit within a building, used or intended as a residence by one or more persons and by not more than one family, which contains one set of cooking facilities and customarily one or more sanitary facilities and sleeping quarters.”*

If you have any questions relating to the above information please feel free to contact me directly.

[Reproduced as Written]

The Landlord confirmed she has not applied for a variance of the zoning bylaw, but stated she was advised it was unlikely any changes would be made. She stated that she was informed she would be fined if she did not comply with the direction of the municipality.

The Landlord testified that the other rental unit is subject to a fixed term tenancy until March 31, 2017. She did not provide a copy of the tenancy agreement in evidence. She also stated that she chose to issue a Notice for the cabin/rental unit as she receives more rent from the other rental unit and did not wish to end that tenancy.

#### *TENANT’S EVIDENCE*

The Tenant testified that while the Landlord insisted the tenancy agreement read as a month to month tenancy, the Landlord promised her a long term tenancy. The Tenant testified that the Landlord is seldom at the property and while she has a fully furnished suite at the rental property lives in another part of British Columbia.

The Tenant opposed the Landlord's request for an Order of Possession and sought to cancel the Notice, as she submitted the Landlord did not have a "government order" requiring her tenancy to end; rather she characterized the letter from the municipality as an "information letter".

The Tenant further testified that the renter in the other rental unit, whom she referred to by his first name, "T" moved out on October 24, 2015. According to the Tenant the renter's sister and family attended the rental property on that date with a moving truck, moved out all of his belongings, cancelled his internet connection, and informed her that the tenancy had ended. Consequently, the Tenant submitted that her tenancy did not need to end as only two dwellings

The Tenant testified that she is responsible for paying for the heating in the cabin/rental unit. She further testified that in March of 2015 the Landlord promised to install skirting on the bottom of the cabin to improve heat retention. She further testified that she sent an email to the Landlord about this, and the Landlord confirmed verbally she would attend to it before the winter of 2015.

#### *LANDLORD'S REPLY*

In reply to the Tenant's evidence that the other renter had vacated the rental property, the Landlord stated that during the Thanksgiving weekend (approximately 1 month before the hearing) the other renter went into the hospital for extensive medical treatment. The Landlord confirmed she agreed to reduce his rent to \$450.00 from \$900.00 while he was away from the property. She further testified that he did not end his tenancy, nor does she want to end his tenancy.

The Landlord stated that she agreed to install the skirting before winter of 2015, but that she was not willing to do so if the cabin was being decommissioned. She confirmed that it would take approximately a month to have the skirting installed.

#### Analysis

Section 47 of the *Residential Tenancy Act* provides as follows:

**Landlord's notice: cause**

**47** (1) 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;

After considering all of the written and oral submissions submitted at this hearing, I find that the Notice should be set aside. I find that the Landlord has failed to prove that the cabin must be vacated to comply with an order of the municipal government authority.

Notably, the letter from the municipality was sent on August 31, 2015, which is after the Landlord issued the Notice. In any case, the letter appears to be for information purposes. No explicit directive or “order” is given to the Landlord with respect to the cabin/rental unit. Consequently, I find that it is not possible, on a balance of probabilities, to decide whether the municipality requires the “decommissioning” of the cabin/rental unit, or whether other options are available to the Landlord rather than ending the subject tenancy.

Further, I find that the other renter appears to have vacated the rental which may have resolved some of the issues raised by the municipality in their letter of August 31, 2015. While the Landlord testifies the other renter is paying a reduced rent while he is receiving medical care, the Tenant’s evidence suggests his tenancy has in fact ended.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord bears the burden of proving the Notice should be upheld and that the subject tenancy must end to comply with a municipal order. I find the Landlord has failed to meet this burden. The notice is cancelled and the tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Landlord agreed she promised to install skirting on the cabin before winter of 2015. Although she was reluctant to commit to this work now that she believed the cabin needed to be decommissioned, she agreed that approximately 30 days would be required to complete this work. As such, I grant the Tenant’s request for an Order pursuant to section 62(3) and Order the Landlord to install the skirting within 30 days of

receipt of this Decision. Should the Landlord fail to complete this work, the Tenant is at liberty to apply for further Orders in this regard.

### Conclusion

The Landlord failed to prove the tenancy must end to comply with a municipal government order. The Notice is cancelled. The Landlord is to install the skirting on the cabin within 30 days of the date of receipt of this Order.

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: November 06, 2015

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Residential Tenancy Branch

