



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This was a hearing with respect to the tenants' application to cancel one month Notices to End Tenancy for cause. The hearing was conducted by conference call. The named parties and their legal counsel attended on behalf of the tenants. The landlord called in and participated in the hearing.

### Issue(s) to be Decided

Should the Notices to End Tenancy dated December 8, 2015 be cancelled?

### Background and Evidence

The rental unit is a single family residence in Chilliwack. The tenancy began in June, 2011. The monthly rent is \$1,500.00. No security deposit was paid by the tenants. According to documents filed by or on behalf of the tenants, the tenant, B.R. named in the tenancy agreement is the executive director of "O" company, a for profit corporation that provides residences for foster-children in care of the Ministry of Children and Family Development. The named tenant D.I. M. is also an officer or employee of "O" company. When the tenancy began in 2011 the rental unit was used to house young mothers, placed in the home with their infants to help them learn parenting skills. In the later years of the tenancy, children with autism related disabilities were housed in the rental unit with care givers. According to the applicants, currently two young girls, aged 7 and 9 live in the home.

The landlord served the tenants with separate one month Notices to End Tenancy for cause dated December 8, 2015. The Notices require the tenants to move out of the rental unit by January 31, 2016. The stated reasons for the Notice to End Tenancy are that the tenant has caused extraordinary damage to the rental unit and that the tenant has not done required repairs of damage to the rental unit. The tenants applied for

dispute resolution to cancel the Notice to End Tenancy. In the application the tenants denied that they caused extraordinary damage to the rental unit. The applicants said that the Notice to End Tenancy was unfounded and requested that the Notice be cancelled. The tenants also submitted that the children occupying the rental unit have come from an unstable family life; they are fragile and it would be traumatic for them to have to move at this time.

The landlord testified at the hearing that she owned the rental property jointly with her sister. In May, 2015 there was a meeting at the rental property between the landlord and a representative for the tenant. An agreement was made about repairs that were to be performed by the tenant as set out in a hand written memorandum. The landlord said that she did not follow up on the matter because her sister became ill. She had to care for her sister until her death in August and her personal circumstances delayed the follow-up on the repairs. When the landlord conducted an inspection of the rental unit in late November or early December, she testified that she discovered numerous problems and repairs that had been inadequately performed. This prompted her to serve the tenants with the one month Notice to End Tenancy for cause. The landlord submitted photographs and a list of necessary repairs for which she claimed the tenants are responsible.

The applicants do not agree that the landlord's listed repairs are matters for which they are responsible or that would constitute grounds for ending the tenancy.

During the hearing, I raised my concerns with the parties as to whether or not this tenancy is one that falls under the jurisdiction of the *Residential Tenancy Act*. The parties were given an opportunity to have a without prejudice discussion to determine whether they could agree between themselves as to a resolution of any of the matters raised by the tenants' application.

### Analysis

The *Residential Tenancy Act* provides by section 4 (d) that the *Act* does not apply to living accommodation included with premises that (i) are primarily occupied for business purposes, and (ii) are rented under a single agreement. The landlord prepared the tenancy agreement using the standard form of agreement provided by the Residential Tenancy Branch. The fact that a residential tenancy form was used does not alter the actual nature of the tenancy agreement. I find that "O" company through its nominees rented the property for an exclusively business purpose, namely: for the provision of residential accommodation for foster children pursuant to a contract or fee arrangement with the Provincial Government. The fact that the rental property is used by the tenants

to provide residential accommodation to third parties does not alter the nature of the tenancy with the landlord. I find that I do not have jurisdiction over this dispute because the tenancy that is the subject of the dispute is not a residential tenancy as defined by the *Residential Tenancy Act*.

During the course of the hearing the parties arrived at an agreement with respect to the end of the tenancy and they requested that I record their agreement in this decision. The tenants and the landlord have agreed that this tenancy will end on February 29, 2016 and the tenants will deliver vacant possession to the landlord on that day. The landlord and the tenants have agreed that they will meet at the rental unit on February 29, 2016 at 3:00 P.M. for the purpose of conducting a move-out inspection.

### Conclusion

The tenant's application to cancel the Notices to End Tenancy is dismissed for want of jurisdiction; the Notices to End Tenancy given by the landlord are not valid and enforceable Notices under the *Residential Tenancy Act*.

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: February 04, 2016

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Residential Tenancy Branch

