



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both tenants and the landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The landlord admitted service of the tenants' dispute resolution package. The tenants admitted service of the 1 Month Notice.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 February 2016. The parties entered into a fixed term tenancy for a period of one year. Monthly rent in the amount of \$895.00 is due on the first. The tenants rent one of two suites in the lower level of the residential property.

On 27 April 2016, the landlord issued the 1 Month Notice to the tenants. The 1 Month Notice set out an effective date of 31 May 2016. The 1 Month Notice set out that it was given as the rental unit must be vacated to comply with a government order.

The landlord testified that he received a verbal order from “B” at the municipality bylaw enforcement branch that he was only permitted to have one rental unit in the lower level of the residential property. The tenant DG testified that he called “B” and she informed the tenant DG that the municipality had issued a letter in 2012 regarding the number of suites in the residential property. The parties agree that the municipality has not issued any documents since the 2012 letter. I was not provided with a copy of this letter.

### Analysis

Paragraph 47(1)(k) of the Act sets out that a landlord may terminate a tenancy where the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

In this case there is no written order setting out the expectations of the municipal body. Without a written document setting out the specific parameters of the order, the landlord has insufficient evidence to show that the rental unit must be vacated to comply with such order. For this reason, the 1 Month Notice is not valid and is of no force and effect. The landlord is not entitled to an order of possession.

As the tenants have been successful in this application, they are entitled to recover their filing fee paid from the landlord. The tenants are issued a monetary order in the amount of \$100.00.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

Accordingly, the tenants may recover the \$100.00 monetary order by deducting that amount from rent or seek recovery of that order directly from the landlord. If the tenants elect to deduct this monetary order from rent, payment of the net amount of rent will satisfy the tenants' obligations pursuant to section 26 of the Act.

Conclusion

The 1 Month Notice is cancelled.

I issue a monetary order in the tenants' favour in the amount of \$100.00. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 08, 2016

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Residential Tenancy Branch