



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On April 11, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated March 29, 2019 (“the 1 Month Notice”).

The matter was set for a conference call hearing. 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 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.

### Preliminary and Procedural Matters

The Landlord testified that he served a copy of his documentary evidence to the Tenant in person on May 19, 2019. The Landlord’s evidence consists of a city order dated February 26, 2019, a city order regarding rubbish and debris dated March 1, 2019; photographs showing the condition of the interior and exterior of the rental unit; and a copy of the 1 Month Notice.

The Tenant testified that he is not sure that he received all of the Landlord’s documentary evidence; however, the Tenant confirmed that he has received a copy of a city order dated February 26, 2019, the city order for rubbish and debris dated March 1, 2019, and the 1 Month Notice.

I find that the Landlord's photographs and the city order regarding rubbish and debris are not sufficiently related to the reason for ending the tenancy provided within the 1 Month Notice.

Since the Tenant has received the city order dated February 26, 2019, regarding a contravention of a zoning and development bylaw, I am satisfied that the parties have exchanged the evidence that is relevant to the issue before me.

During the hearing the Landlord's advocate, Mr. S.W. pointed out that the Landlord only provided the Tenant with two pages of the city order.

At the end of the hearing the Landlord was ordered to provide the Tenant and the Residential Tenancy Branch ("the RTB") with the third page of the city order. The Landlord provided the RTB with the entire three pages of the city order.

#### Issue to be Decided

- Is there sufficient cause to end the tenancy or should the 1 Month Notice be cancelled?

#### Background and Evidence

The parties provided different dates on when the tenancy began. The Landlord testified that the tenancy began in February 2009 and the Tenant testified that the tenancy began sometime in 2003. The parties agreed that the tenancy is on a month to month basis. The parties agreed that Rent in the amount of \$395.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$175.00.

The rental unit is a house and the Landlord testified that he rents out eight bedrooms.

The Landlord testified that he is ending the tenancy because he received a legal notice from the city that the rental property is in contravention of a zoning and development by-law. The Landlord provided a copy of an Order from the city dated February 26, 2019. The Order states that the approved use of the building is a two family dwelling. The Order states that the city inspected the property and determined that the building is being occupied as a rooming house. The Order provides that the Landlord is ordered to:

IMMEDIATELY

- *Remove the keyed locks on all bedroom doors; and*
- *Cease use of this building as a rooming house*

The Landlord issued the 1 Month Notice to the Tenant on March 29, 2019, by posting the Notice to the Tenant's door. The reason provided for ending the tenancy within the 1 Month Notice is:

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

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant received the 1 Month Notice on April 1, 2019, and disputed it on April 11, 2019, within the required timeframe.

In reply to the Landlord's testimony, the Tenant's advocate submitted that the Landlord failed to provide details of cause within the 1 Month Notice. The Tenant's advocate also submitted that the Landlord did not provide the Tenant with a copy of the City Order prior to the disclosure provided for this hearing. The Tenants advocate submitted that the Tenant initially believed that the reason for ending the tenancy was related to an issue with rubbish and debris.

The Tenant testified that the Landlord did not inform him that the tenancy needed to end prior to the Tenant receiving the 1 Month Notice. The Tenant testified that the details of cause within the 1 Month Notice are blank.

The Tenants advocate submitted that the City Order suggests that it is not necessary to end all the tenancies and that the Landlord should explore other options. The Tenant's advocate submitted that the Landlord has not met the burden to prove that the rental units need to be shut down.

The Tenant proposed that since the rental property is a two family building, he should be permitted to move into the upstairs unit at the same amount of rent. The Tenant submitted that this opportunity should be offered to him as he has lived there for the longest period.

The Landlord submitted that he has issued notices to end tenancy to all the occupants of the property and will likely re-rent the units out as single family dwellings.

The Landlord requested an order of possession for the rental unit on the effective date of the 1 Month Notice.

### Analysis

Section 47 (1)(k) of the Act provides that a Landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the Landlord received a legal order from the city requiring him to comply with the by-law by remove the keyed locks on all bedroom doors, and ceasing use of the building as a rooming house.

With respect to the Tenant's concern that the Landlord did not give advance notice of the city order to the Tenant and did not provide the details of cause within the 1 Month Notice; I find that such information would have assisted the Tenant to fully understand the reason for the need to end the tenancy. I find that the failure of the Landlord to provide the details of cause in the Notice and his decision to not attach the City Order does not invalidate the 1 Month Notice. The 1 Month Notice provides that the rental unit /site must be vacated to comply with a government order. The Tenant applied for dispute resolution on April 11, 2019, and his application indicates that he was aware of the city order at that time. While I accept that the Tenant received official disclosure of the City Notice from the Landlord on May 19, 2019, I find that the Landlord's evidence to support the Notice was served in accordance with the Residential Tenancy Branch Rules of Procedure. The Tenant received the Landlord's evidence within seven days of the hearing.

With respect to the Tenant's suggestion that the Landlord does not have to end all the tenancies and could continue to rent one of the dwellings to him, I find that there is no requirement under the Act for the Landlord to offer the Tenant use of the entire dwelling, or to maintain the same terms and conditions of tenancy. The current tenancy agreement provides the tenant with a bedroom and shared use of common areas, not the

exclusive use of the entire home. The parties are at liberty to negotiate and enter into a new tenancy agreement.

I find that the Landlord has provided sufficient evidence to establish that the rental unit must be vacated to comply with a City Order.

The Tenant's application to cancel the 1 Month Notice dated March 29, 2019 is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 1 Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession of the rental unit.

Since the Tenant received the 1 Month Notice on April 1, 2019, effective date of the 1 Month Notice automatically corrects to be May 31, 2019, I find that the Landlord is entitled to an order of possession effective no later than 1:00 pm on May 31, 2019.

The Landlord is granted an order of possession effective no later than 1:00 pm on May 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

I find that the Landlord has provided sufficient evidence to establish that the rental unit must be vacated to comply with a City Order.

The Tenant's application to cancel the 1 Month Notice dated March 29, 2019, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on May 31, 2019, after service on the Tenant. This order may be filed in the Supreme 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 29, 2019

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Residential Tenancy Branch