



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee, under section 72.

Tenants MH (the tenant) and MW and landlord RT attended the hearing. Landlord RT was assisted by agent GT (The landlord). Witness MT also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies, I find that each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I

must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except the cancellation of the notice to end tenancy which will be decided upon.

#### Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenants' application is dismissed, is the landlord entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on April 19, 2013. Monthly rent is \$940.00, due on the first day of the month.

Both parties agreed the tenants received the Notice on November 10, 2022. The tenants submitted this application on November 17, 2022 and continue to occupy the rental unit.

The landlord submitted the Notice into evidence. It is dated November 10, 2022 and the effective date is December 10, 2022. The reason to end the tenancy is: "Rental unit/suite must be vacated to comply with a government order".

The details of the cause are:

Inspection of suite done May 4<sup>th</sup>/22, inspection failed. Inspection determines suite was built illegally / without proper permits. Landlord has been instructed / ordered to remove suite + convert space back to original state, as per the city of [redacted].

The landlord submitted into evidence a document named Inspection details, issued on May 05, 2022 (the document):

Inspection result: Rejected:

Inspection comments: May 04, 2022 at 10:00 AM. Work done without permits.

Main floor:

- 1) Carport on the Right side (West) has been converted to Garage with a Garage door and access to the main floor and 2nd floor.
- 2) Carport on the Left side (East) has been converted into 2 rooms with access from exterior and from within the main floor including doors & windows.
- 3) Attached single level structure on the North East side (beside the Left carport ) with 2 garage doors, & 2 rooms with doors & windows.
- 4) Addition of walls in unfinished area to create space for Washroom on Rear East side of the main floor.

2nd Floor:

- 1) Enclosed the Stairs on the rear Right (South West) leading to upper floor, and Converted sundeck into 2 rooms above carport (now converted into a covered garage)
- 2) Closed 2 pocket doors beside stairs (Kitchen/Dining & Corridor leading to the West Bedroom)
- 3) Wall removed between Kitchen & Sundeck (North West)

All additions and alterations not mentioned above, and including the above to be reverted to original, or plans, permits, inspections and approvals are required for all additions / alterations without benefit of a Building Permit (subject to compliance to the City of [redacted] Building & Zoning Bylaws)

Follow up inspection in 45 days.

The landlord affirmed the only document that he received was the inspection details. The landlord stated that he is not sure if the city officer ordered or advised him that the rental unit must be demolished.

The tenant testified he does not believe the city ordered the rental unit to be demolished.

### Analysis

I accept the undisputed testimony that the tenants received the Notice on November 10, 2022. I find the tenants' application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(k) of the Act states:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

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

Upon review of the May 05, 2022 document issued by the local government, I find this document is not a government order. Rather, I find this document to be the report of an inspection. I make this finding because the document does not stipulate it is a compliance order. The local government provides the landlord with a deadline for a follow up inspection.

Furthermore, the landlord admits that he is not sure if the city officer advised or ordered that the rental unit must be demolished.

I also note the landlord received the document on May 05, 2022 and served the Notice on November 10, 2022.

Based on the foregoing, I find the landlord failed to prove, on a balance of probabilities, the ground of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

As the tenants are successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a), the tenants are authorized to deduct \$100.00 from the next rent payment to recover their 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: January 05, 2023

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Residential Tenancy Branch