



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC  
                             OPC, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a One Month Notice to End Tenancy for Cause. The landlord has applied for an Order of Possession, and to recover the filing fee from the tenant for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was represented by an Agent and another person introduced as the co-owner of the rental unit. The co-owner and the landlord's agent and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated January 19, 2023 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?

### Background and Evidence

**The co-owner** (CS) is the landlord's daughter and testified that this month-to-month tenancy began on October 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 was payable on the 1<sup>st</sup> day of each month, which was increased by \$22.50 effective October 1, 2022, and there are no rental arrears. On September 30, 2020 the landlord collected a security deposit from the tenant in the

amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, both of which are still held in trust by the landlord. The landlord owns half of a side-by-side duplex, and the rental unit is a basement suite in that portion of the building. The upper unit is also rented. A copy of the tenancy agreement and Notice of Rent Increase have been provided as evidence for this hearing.

The co-owner also testified that the tenant was served with a One Month Notice to End Tenancy for Cause on January 19, 2023 by registered mail. A copy has been provided for this hearing and it is dated January 19, 2023 and contains an effective date of vacancy of February 28, 2023. The reason for issuing it states: Rental unit/site must be vacated to comply with a government order. The Details of Cause(s) section states that a letter was received by the City stating that the stove and hood fan, along with all electrical wiring associated, must be removed by no later than March 3, 2023. A copy of the letter has been provided for this hearing, which is dated January 17, 2023, indicating that instances of unpermitted electrical work were observed during an inspection by City staff, and in contravention of the City bylaws. It also states that the letter serves as notice under section 24(1) of the bylaw that the premises must be brought into compliance, and that a completed building permit application must be submitted for the work by March 3, 2023 or bylaw notices of \$300.00 may be issued for each separate offense.

The co-owner further testified that the landlord has been talking to the City and they are aware that the landlord is trying to get the tenant to vacate the rental unit in order to comply before fines are imposed. The rental home was built in 1975 so in order to get a permit significant renovations are required, and the home was purchased with the suite. The City does not permit basement suites in duplexes. The tenant acknowledged that and contacted the City to find out what would happen and they advised that it had to be decommissioned.

The landlord received a letter on April 21 2023 from the tenant indicating that she would have to move. Other tenants would have to move as well. The landlord does not own other rental properties. The rental unit cannot be re-rented, it must be a part of the entire home and will be fully decommissioned. The landlord was not aware that the rental suite was unauthorized when it was purchased, and the landlord may make a complaint against the realtor.

**The landlord's agent** testified that the tenant has indicated that the tenant would be comfortable with removing the cooking facilities, but the landlord is required to provide services and facilities, and there is no way for the landlord to comply with the City bylaw

and the landlord is not willing to contract outside of the *Act*. The landlord wants to maintain the property as it should be in accordance with the law.

**The tenant** testified that the tenant has not received a government order to vacate. The tenant called an inspector who attended the rental unit on January 20, 2023 and said there was no order issued. The tenant sent an email respecting that to the co-owner right after the call, a copy of which has been provided for this hearing. The City did not have a problem with the tenant residing in the rental unit after the stove was removed, only that the landlord had to remove the stove, fan and wiring. There is no order for the suite to be shut down, and it is not condemned. The City is aware of authorized suites, and is not concerned due to the housing crisis.

The tenant also contacted an MLA who said it would be unlikely that the tenant would have to move because the suite has not yet been legalized. A copy of the response from the MLA has been provided for this hearing. A copy of an email from another MLA has also been provided for this hearing which states that duplex suites are going to be legalized, with a link to a press release. The email goes on to say that the press release is a bit wordy, "...however it does clearly state that duplex suites will be legalized as well." Also provided is a excerpt from "BC plan to legalize all illegal suites," which states that "The B.C. government will overhaul municipal zoning rules to allow for more so-called "missing-middle" housing, such as townhomes and multiplex homes on single-family lots. It will also introduce a flipping tax and legalize all secondary suites as part of Premier David Eby's housing strategy announced on Monday." It is dated April 3, 2023.

The tenant has also provided copies of advertisements in the area for suites in duplexes for rent in the community.

#### SUBMISSIONS OF THE LANDLORD:

The offer still stands, if the tenant is willing to mutually agree to move out by June 30, 2023, the landlord would be content with that. However, if the tenant is not willing to sign a mutual agreement to end the tenancy, the landlord seeks an Order of Possession effective on 2 days notice to the tenant. The landlord assumes that the City doesn't give orders, but usually issue notices and fines.

#### SUBMISSIONS OF THE TENANT:

A neighbour complained about large piles of dirt and asphalt left by the landlord. The City says that the tenant does not have to vacate, so there must be an ulterior motive.

There is no order, and the landlord can remove the stove to avoid fines. Once the stove is gone, the City won't issue any fines.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I have reviewed all of the evidentiary material of the parties, specifically the letter from the City after the inspection on January 12, 2023. No where in the letter does it indicate that an order has been issued by the City or that the rental unit has to be vacated. It is not an order to have the rental unit vacated, but a notice that the landlord must bring the premises into compliance with City bylaws, and that a building permit must be submitted. I also find that some of the evidence provided by the landlord has absolutely no relevance to this application.

I think I can take judicial notice of the press release indicating that such suites will be permitted as part of the Premier's housing plan.

The landlord's submissions indicate that the landlord "assumes" that the City does not issue orders, but notices and fines. No where in the letter from the City does it indicate that orders won't be issued.

In the circumstances, I am not satisfied that the landlord has established that the rental unit must be vacated to comply with a government order, or that any such order exists. Therefore, I cancel the One Month Notice to End Tenancy for Cause, and the tenancy continues until it has ended in accordance with the law, and the landlord's application is dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause dated January 19, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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 25, 2023

---

Residential Tenancy Branch