



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **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 a 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 and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

I note that section 55(1) 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.

Tenants AM (the tenant) and CH and landlord JD and LD (the landlord) attended the hearing. 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 and section 95(3) of the Act.

The landlords confirmed receipt of the notice of hearing and the evidence (the materials). The tenants confirmed receipt of the landlords' response evidence.

The landlord affirmed that she submitted the response evidence to the Residential Tenancy Branch (RTB) on May 8 or 9, 2023.

Both parties confirmed they received a copy of the Notice and the letter dated January 24, 2023 (the Letter) and that they had enough time to review these documents.

Based on the undisputed testimony, I accepted service of the materials in accordance with section 89(1) of 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, are the landlords entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence 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 landlords' obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on March 01, 2021. Monthly rent is \$2,040.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$900.00. The tenant affirmed that the landlord also collected a \$900.00 pet deposit. The landlord denied collecting the pet deposit.

Both parties agreed the tenants received the 3-page Notice on January 25, 2023.

The tenants applied for dispute resolution on January 31, 2023 and continue to occupy the rental unit.

The tenants submitted the Notice into evidence. It is dated January 24, 2023 and the effective date is February 28, 2023. The reason to end the tenancy is: "Rental unit/site must be vacated to comply with a government order."

The landlord affirmed that a 2 month notice to end tenancy for landlord' use (the 2 Month Notice) dated April 29, 2022 was cancelled by the RTB on October 13, 2022. The landlord believes that the tenants submitted a complaint to the municipality regarding the rental unit and a bylaw inspector inspected the rental unit on January 23, 2023.

The landlord received the Letter from the municipal government on January 24, 2023:

This letter is being sent in follow up to the inspection on January 23, 2023. The inspection confirmed that a secondary suite (second dwelling unit) exists in the basement level of the residence with a den, bedroom, kitchen and (existing) washroom, completely separated from the rest of the residence. Building permit records on file at the District show a basement with stairs to the residence and no cooking facilities, bedrooms or other indications of secondary suite.

[...]

In order to comply with the District's bylaws, you must apply for a building permit within thirty (30) days from the date of this letter to:

- Legalize the lower level as a secondary suite and complete the permit within six (6) months from the permit being issued; **or**
- Decommission the suite by removing the stove, wiring and stove venting assembly as well as either remove or bring up to code the other work (interior walls, enclosure of the staircase etc) within three (3) months from the permit being issued.

(emphasis added)

The landlord received a quote of \$90,553.00 to make the necessary renovation to legalize the rental unit. The landlord decided that it was not in his best interest to legalize the rental unit due to the high costs and applied for a permit to decommission the rental unit. The landlord received the permit on April 14, 2023.

The landlord did not receive any other document from the municipal government with orders.

The tenant affirmed the Letter is not an order to vacate the rental unit and that there is no evidence that the landlord ever received a government order to vacate the rental unit.

The tenant affirmed that she did not submit a complaint to the municipality about the rental unit and believes that the landlords asked their neighbours to submit the complaint.

### Analysis

I accept the undisputed testimony that the landlords served the Notice and the tenants received it on January 25, 2023. 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 Letter, I find it is not a government order. Rather, I find the Letter states the landlords can apply for a building permit to legalize the rental unit or decommission it. The Letter does not stipulate it is a compliance order for the rental unit to be vacated.

I accept the landlord's uncontested testimony that they decided that it was not in their best interest to legalize the rental unit and that the landlords chose to decommission it.

Based on the foregoing, I find the landlords 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 in this application, I authorize the tenants to recover the filing fee.

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 their 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: May 26, 2023

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Residential Tenancy Branch