



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CENTURY 21 AMOS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 16, 2023, wherein the Tenant sought the following relief:

- an Order canceling a 1 Month Notice to end Tenancy for Cause, issued on March 7, 2023 (the "Notice")
- an Order for monetary compensation from the Landlord in the amount of \$9,112.00;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and
- recovery of the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on June 27, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Residential Tenancy Branch Rule of Procedure 2.3 provides 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.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy (such as the Tenant's request for an Order that the Landlord comply with the legislation or the tenancy agreement) are no longer relevant; accordingly those claims are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the

reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Owner's representative, B.A., testified on behalf of the Landlord. He confirmed that the owners purchased the property in 2015. The rental unit is a carriage house which was on the property at the time. The property was zoned single family dwelling; however, the owners were informed at the time that the Town allowed carriage houses in this neighbourhood. The owners believed at the time of purchase that this was a legal carriage house.

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began October 1, 2017.

B.A. stated that the owners made an application to subdivide the property at which time the legality of the rental unit was questioned. Evidence submitted by the Landlord confirms the municipality in which the rental unit is located believes the carriage house was built without permits and must be demolished. On May 2, 2023 the Municipality in which the rental unit is located posted a "Do Not Occupy" Notice on the rental unit (the "Municipal Order").

B.A. testified that to his knowledge the Carriage House was built pre-1967. He further claimed that there are no records for building permits for this property at the municipality. The owners were informed that Fortis installed services to the building and would only do so if there was a building permit issued at some point.

The Notice was issued on March 7, 2023. A copy of the Notice was provided in evidence before me. The Notice was signed and dated by the Landlord, but the Landlord did not check off the box indicating the reasons for issuing the Notice on the second page. However, in the Details of Cause section the Landlord clearly indicated as follows:

**The Landlord has received a "30 Day Notice to Vacate" the rental unit from the Town of Oliver.
The rental unit must be vacated on or before April 30th/2023**

B.A. submitted that it is the Landlord's position that the rental unit/carriage house should be permitted and was in fact built with the appropriate building permits. He further

noted that the Landlord has made a complaint to the Office of the Ombudsperson as they believe the decision to issue the Municipal Order was in error. Despite this, the Landlord issued the Notice as to fail to comply with the Municipal Order would attract considerable financial penalties. B.A. confirmed that should the Municipal Order be rescinded or set aside, the Landlord would reinstate the tenancy.

In reply the Tenant confirmed she received the Municipal Order requiring the rental unit be vacated. She also confirmed that it was her position that the Landlord was properly maintaining the rental unit and that it was not a health or safety risk. The Tenant did not dispute the fact an Order had been received from the Municipality ordering the Landlord to ensure the premises were vacated.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. In this case the Landlord seeks to end the tenancy for cause pursuant to section 47 of the *Act*. Section 47(1)(k) allows a Landlord to end a tenancy if 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 was no dispute that the municipality in which the rental unit is located has issued an Order requiring the rental unit to be vacated.

Both parties took issue with whether the Municipal Order was valid. However, whether the Order from the Municipality was valid or not is not within my jurisdiction. I must focus on the issue before me which is whether the Landlord has cause to end this tenancy. In this case an Order from the Municipality exists and that Order mandates the premises be vacated. I therefore find the Landlord has established cause to end this tenancy pursuant to section 47(1)(k) of the *Act*.

I dismiss the Tenant's request for an Order canceling the Notice. Section 55 of the *Act*, mandates that I must issue an Order of Possession in the event I dismiss a Tenant's application to cancel a notice, provided the notice complies with section 52. I have reviewed the Notice and find it complies with section 52. While the Landlord failed to check off the appropriate box on page 2, I find the information provided in the "Details of Cause" section to be of sufficient specificity to inform the Tenant that the reason the Landlord wished to end the tenancy was to comply with the Do Not Occupy Order from the town of Oliver. I therefore find the Landlord is entitled to an Order of Possession.

The Order will be effective two (2) days after service on the Tenant and may be filed and enforced in the B.C. Supreme Court.

As the Tenant has been unsuccessful, she is not entitled to recover the filing fee.

Conclusion

The Tenant's request for an Order canceling the Notice is dismissed without leave to reapply. The tenancy shall end in accordance with the Notice.

The Landlord is granted an Order of Possession.

The Tenant's request for recovery of the filing fee, and the Tenant's request for an Order that the Landlord comply with the legislation or the tenancy agreement is dismissed without leave to reapply.

The Tenant's request for monetary compensation from the Landlord is dismissed with leave to reapply.

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: July 12, 2023

Residential Tenancy Branch