# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

CNC, OLC, REP, RP, OPC, FF

Introduction

This was a cross-application hearing.

The tenants have applied to cancel a Notice To End Tenancy for Cause, Orders the landlord comply with the Act; that the landlord make emergency repairs and repairs, and to recover filing fee costs from the landlord.

The landlord applied requesting an Order of possession for cause; an Order allowing entry to the unit and to recover the filing fee costs from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

At the start of the hearing the parties acknowledged receipt of the Notice of hearing package served by the other within the required time-frames.

As evidence submissions for the landlord and tenant were not numbered I determined that during the hearing any written submission referenced must be identified by each party, in order to ensure that all documents were available. There were no issues raised during the hearing in relation to documents that were reviewed and referenced.

At the start of the hearing I determined that the tenant who had commenced the tenancy agreement in 2009 was, in fact, the only tenant. The other 2 named tenants and respondents did not sign the tenancy agreement and became roommates with the tenant, at different times since 2005. Therefore, I determined that G.P. and M. McLa. are not co-tenants and are occupants, as suggested by Residential Tenancy Branch policy, which defines an occupant:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

The parties agreed that the 1 Month Notice to End Tenancy for cause issued on June 21, 2012, is of no force and effect. The landlord withdrew that Notice and the tenant accepted withdrawal of that Notice.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the June 24, 2012 Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on June 24, 2012, be cancelled?

Is the landlord entitled to an Order of possession?

Must an Order be made in relation to the landlord's right to enter the rental unit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced in 1999; the current owners are the 3rd landlords; they purchased the home in September 2011. In 1999 the tenant signed a written tenancy agreement with a previous owner; a copy of that agreement was supplied as evidence.

Rent is $1,560.00 per month, due on the first day of each month.

The unit is one of 2 in a single family dwelling.

The tenant acknowledged receipt of a 1 Month Notice to End Tenancy for Cause on June 26, 2012. The Notice was served to the tenant via registered mail; the tenant disputed the Notice within the required time-frame.

The Notice indicated that the tenant is required to vacate the rental unit on July 31, 2012.

The sole reason on the Notice was:

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

Landlord's Submission:

The landlord provided a copy of a June 18, 2012, letter, which superseded a letter issued on June 15, 2012, by the Manager, By-law Administration, for the City of Vancouver. The letter was issued as the result of a "*Special Inspection*" carried out at the property on May 31, 2012, to determine the upgrading required to retain a secondary suite on the second floor of the rental unit building. In accordance with the Vancouver Zoning and Development and Electrical By-laws, the letter gave the landlord 2 choices:

- *to make an application to commence upgrading work for a secondary suite;*

*OR*

- *vacate the unapproved second floor suite, remove the kitchen and its cooking facilities…and restore the use of this building to a one family dwelling;*

*AND*

- *complete the mandatory work mentioned on page 4 of the attached letter within 30 days of the date of the letter.*

The landlord stated that the 2nd choice has been selected and that this choice was made based on an Order of the City of Vancouver. The landlord stated they have informed the City of this choice, however, written confirmation was not provided.

The landlord said that they do not wish to wait for the City to issue Orders which threatened legal action and that they are entitled to select the least onerous option contained in the letter issued on June 18, 2012. The option they have selected requires the tenant to vacate the home.

On June 4, and June 9, 2012, the landlord obtained an Electrical permit and a Plumbing permit, required to carry out the mandatory repairs set out in the June 18, 2012, letter.

The landlord stated they currently have no plans to rent out the unit and that after the kitchen is removed, that portion of the home will remain vacant.

The landlord alleged that the tenant has thwarted their right to enter the rental unit and they wish an Order that the tenant allow access to the unit. The landlord stated they had not been able to enter the unit since March, 2012.

Tenant's Submission:

The tenant provided examples of a number of previous Orders issued by the City of Vancouver between 2009 and 2011, for other properties in the City. These Orders reference a lack of adherence to standards of property maintenance, single family dwellings being used as rooming houses and rubbish that must be removed. The Orders inform the property owners that lack of compliance could result in charges and fines; assignment of clean-up costs or that occupation of the building must cease.

All of these Orders differed from the June 18, 2012, letter given to the landlord, in that they did not provide the recipient a choice. The tenant submitted that the June 18, 2012, letter issued to the landlord does not constitute a government Order and as a result, the letter fails to support the reasons given on the Notice; that the unit must be vacated as the result of a government Order. The tenant said that the June 18, 2012, letter is just that, a letter setting out choices for the landlord, with some mandatory upgrades that must, no matter which choice they select, be completed to the home.

The tenant has talked with the City of Vancouver, Chief Building Official, who has told the tenant that the Chief Building Official is the only person who has authority to issue Orders; that this authority is not delegated to other staff members. An attempt was made to have the Chief Building Official attend the hearing as a witness; a telephone call was placed, he answered but declined to participate in the hearing as he was unable to take time at that moment.

The tenant said the landlord is acting in bad faith. A copy of a decision issued on June 18, 2012, was supplied as evidence. The landlord and tenants had each made applications for dispute resolution. As a result of a June 13, 2012 hearing, a 1 Month Notice to End Tenancy for Cause, dated May 7, 2012, was canceled. That Notice alleged the tenants had jeopardized the health and safety of others and breached a term of the tenancy agreement.

On June 18, 2012, a 2 Month Notice to End Tenancy for Landlord's Use of the Property, issued on May 7, 2012, was also canceled. The Notice had indicated that the landlord wished to complete renovations to the unit; however the landlord did not have any permits or approvals required by law.

Three days after the June 18, 2012, decision was issued the landlord gave the tenants a 1 Month Notice to End Tenancy for Cause that indicated the tenants had not complied with an Order under the legislation, within 30 days after the tenant received the Order or the date in the Order. The parties agreed that this Notice was of no force or effect and it was replaced by the Notice issued on June 24, 2012, which is in dispute.

The landlord was not prepared to call in any witnesses from the City, in support of their submission that the June 18, 2012, letter constitutes a government Order. The landlord

stated it would be unreasonable to ignore the direction given in the letter and to delay until an Order is issued in another form.

The landlord stated that the hearing process is a waste of time as eventually they are going to upgrade the unit. The landlord has informed the City staff of their choice made and has requested an extension of time to complete the mandatory work and deconstruction of the kitchen.

In relation to entry to the unit, the tenant stated the landlord will not speak with him and that he has no problem with the landlord entering for reasonable purposes. The tenant stated that the landlord has not made any request for entry since they were last in the unit on June 26, 2012, with a contractor. The June 18, 2012, decision supplied by the tenant indicated that the landlord had been in the unit on April 16 and May 29, 2012; and that a refusal for entry attempted on April 28, 2012, was reasonable on the part of the tenant.

Analysis

The tenant has applied to cancel a Notice to End Tenancy for Cause, issued on June 24, 2012. In a case where a tenant has applied to cancel a Notice to End Tenancy for Cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenancy should end as the result of a government Order.

*Blacks' Law Dictionary, 6th Edition*, defines Order, in part, as:

> *A mandate; precept, command or direction authoritatively given; rule or regulation….*

I find that the instructions given in the letter issued on June 18, 2012, by the Manager, By-Law Administration, with the City of Vancouver meets the definition set out above. It is difficult to accept that the letter was intended as anything other than an authoritative direction that the landlord take 1 of 2 steps and to complete mandatory work to the home, within 30 days. The landlord has indicated the selection has been made; that they will vacate the unapproved second floor suite where the tenant resides and that the kitchen will be deconstructed. An extension of time to comply has been requested; which does not seem unreasonable, given this hearing was scheduled outside of the 30 day period set out in the City letter.

I have considered the June 18, 2012 letter and the authority of the writer and have determined that the letter does direct the landlord to make certain decisions and mandatory repairs, within a set time-frame. I have rejected the tenant's submission that

the Manager, By-law Administration does not have the authority to issue Orders; there was no evidence before me to support that suggestion. To expect the landlord to ignore the direction given by the Manager of By-law Administration for the City of Vancouver, would be unreasonable and would suggest that letters giving instructions and specific direction to property owners can be ignored until a threat of Court action and fines are issued.

As I have accepted that the June 18, 2012 letter was an Order given to the landlord, I have considered that Order in relation to the reason given on the Notice to End Tenancy issued on June 24, 2012. There is no doubt that the relationship between the parties is strained and that the landlord has very recently issued a Notice to end tenancy on the premise that renovations would be completed that required vacant possession.

The tenant raised the issue of good faith; however, Residential Tenancy Branch policy suggests that good faith is a concept that may be considered only when the landlord is ending the tenancy for reasons included on a 2 Month Notice to End Tenancy for Landlord's use; I find this to be a reasonable stance. In this case the landlord has issued a 1 Month Notice to End Tenancy for Cause.

In relation to the allegation that the tenant is unreasonably barring entry to the unit by the landlord; I have rejected that submission. On June 18, 2012, the dispute resolution officer found that the landlord was given access to the unit in April and in May, 2012, and that a refusal for entry attempted on April 28, 2012, was reasonable.

The landlord's submission that entry had not been achieved since March, 2012, was not consistent with the evidence before me. I find that the truth of the matter is more likely the circumstances described by the tenant and that contained in the June 18, 2012, decision. There was no evidence before me that the landlord had given any recent Notice of entry to the tenant.

I have appended section 29 of the Act to this decision; which sets out the requirements for landlord's entry to a rental unit. The landlord was warned that entry must be for a reasonable purpose and may not be so frequent and for reasons that could form a loss of quiet enjoyment to the tenant.

Therefore, I find that the tenant's application is dismissed. The landlord has been granted an Order of possession effective 2 days after service to the tenant.

As the landlord would be entitled to request an order of possession if the tenant's application was dismissed and the landlord's request for an order in relation to entry is dismissed, I decline filing fee costs to the landlord.

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause issued on June 24, 2012, is dismissed.

I have determined that the landlord has submitted sufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The landlord has been granted an Order of possession that is effective **July 31, 2012, at 1 p.m.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant has leave to reapply in relation to the remaining matters included on the application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2012.

Residential Tenancy Branch

***Landlord's right to enter rental unit restricted***

***29*** *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

*(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

*(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*