



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, FF

### Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for Cause, to cancel a Notice to End Tenancy for Landlord's Use of Property, and to recoup her RTB filing fee.

Both the tenant and the landlord's son participated in the teleconference hearing and gave affirmed evidence.

### Issue(s) to be Decided

Does a tenancy agreement exist between the parties?

Should the Notice to End Tenancy for Cause be cancelled?

Should the Notice to End Tenancy for Landlord's Use of Property be cancelled?

### Background and Evidence

The tenant gave evidence that she received a Notice to End Tenancy for Cause (the "Cause Notice") and a Notice to End Tenancy for Landlord's Use of Property (the "Landlord's Use Notice") which were taped to her door on December 31, 2013. The Cause Notice specifies the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

### **Issue of Cause:**

At the hearing, the landlord withdrew the allegation that the tenant has assigned or sublet the rental unit/site without landlord's written permission.

The landlord asserts that no tenancy agreement exists because the landlord did not consent to the tenant moving in to the rental unit and she is “basically squatting”. The landlord states that the tenant obtained a key for the rental unit from her friend who is a tenant in another suite in the building. The landlord says he received \$650.00 cash in the last week of October 2013 from the friend tenant, on behalf of the tenant in this application. The landlord says he received \$650.00 cash from another tenant in the building in November and December 2013, on behalf of the tenant in this application. He states that although the landlords were not happy with the situation, they accepted the payments because they wished to take whatever money they were given.

The landlord gave evidence that the rental unit had previously rented for \$800.00 per month and they would not have agreed to rent it to a new tenant for \$650.00. The landlord’s position is that the tenant is repeatedly late paying the rent because she has only paid \$650.00 per month since she has lived in the rental unit.

The landlord gave evidence that no written tenancy agreement exists and the landlord did not obtain a security deposit from the tenant.

The tenant gave evidence that she heard about the rental unit at the end of September 2013 from her friend who lives in another suite in the building. She said that the landlord showed her the rental unit and they agreed to a tenancy starting October 15, 2013 wherein the tenant is obligated to pay \$650.00 in rent in advance payable on the 15<sup>th</sup> day of the month. She said the parties agreed to rent of \$650.00 per month because the rental unit was in very poor condition and the landlord did not wish to clean it up. She states she has never been late with the rent.

The tenant called a witness who is a tenant in another suite in the building, and the witness gave affirmed evidence. He said that he received the tenant’s rent in cash and provided it to the landlord because he is home more often than the tenant. He said he gave the landlord \$650.00 on either November 15 or 16, 2013 and on December 16, 2013 on behalf of the tenant. The landlord accepted the rent and did not say it was the wrong amount.

### **Issue of Landlord’s Use:**

The landlord gave evidence that the landlord intends to demolish the building containing the rental unit in order to redevelop the site. The landlord provided the following documentary evidence:

- (i) A copy of a letter from the City of Vancouver dated October 7, 2013 regarding the rental unit address. The letter reads, in part:

“On behalf of the Director of Planning, your application has been approved to develop on this site a two-and-a-half storey, two-family dwelling with a detached accessory building (garage) at the rear, providing 2 parking spaces having vehicular access from the lane.

A permit may be issued upon the completion of the revisions and conditions noted below under items 1.0 to 1.7 of this “prior-to permit issuance” letter. ...”

- (ii) A copy of an email dated December 16, 2013 from a City of Vancouver Project Coordinator, Development Services regarding the rental unit address. The email is apparently to the architect and reads “You can go ahead and make application for the BU permit. I have received development approval but am waiting on landscaping approval for the DE.”

The landlord gave evidence that he has now applied for a building permit but has not been granted the permit yet. He anticipates obtaining the building permit in late February 2014.

### Analysis

I find there is a tenancy agreement between the parties. I accept the tenant’s evidence that the landlord agreed that she move into the rental unit and that the parties agreed the rent would be \$650.00 per month payable in advance on the 15<sup>th</sup> day of the month. This evidence is more plausible than the landlord’s assertion that the tenant is “squatting” in the rental unit. The tenant’s evidence is also more consistent with the landlord having accepted rent on behalf of the tenant on November 15 or 16, 2013 and December 16, 2013 without objections, and with the landlord not seeking an order of possession during the time the tenant has been living in the rental unit.

For these reasons, I find that the tenant’s rent is \$650.00 per month and the tenant has not been late with her rent. Accordingly, I order that the Cause Notice be cancelled.

Based on the landlord’s evidence that he does not yet have a building permit, I find that the landlord does not meet the criteria set out in Section 49(6), which reads in part:  
(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;

Based on the landlord’s evidence, I find that the landlord intends in good faith to demolish the rental unit. However, the landlord must have all the necessary permits and approvals required by law at the time the landlord issues a Notice to End Tenancy

for Landlord's Use. The Landlord's Use Notice is therefore premature. For that reason, I order that the Landlord's Use Notice is cancelled.

The tenant is entitled to recover her RTB filing fee of \$50.00. The tenant may deduct \$50.00 from her rent.

### Conclusion

I order that the Cause Notice is cancelled and the Landlord's Use Notice is cancelled.

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 30, 2014

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Residential Tenancy Branch

