



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, the landlord's legal counsel, building manager and witnesses.

### Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2009 with an effective vacancy date of March 1, 2010 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord submitted the following documents into evidence:

- A letter from the landlord to the tenant dated August 24, 2009 regarding a flood in the rental unit;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2009 with an effective vacancy date of March 1, 2010 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant;
- A letter from the landlord to the tenant dated December 31, 2009 regarding the notice to end the tenancy;
- A proof of service document showing the 2 Month Notice to End Tenancy for Landlord's Use of Property was served directly to the tenant on December 31, 2009 at 3:00 p.m. and was witnessed by a third party;

- A letter from a flooring supplier dated January 5, 2010 indicating flooring can only be installed after the renovations are complete;
- A letter from a contractor (undated) stating the rental unit requires a complete renovation but he is unwilling to complete until the unit is vacant, citing black mould and general uncleanness;
- A letter dated January 18, 2010 from another contractor outlining why he believes the vacant access is required to the rental unit for the renovations;
- A notice to the tenant dated January 29, 2010 requesting entry to the rental unit for an inspection on February 1, 2010;
- Letters and notes dated February 1, 2010 to the landlord from the building manager and contractor describing their attempt to attend the rental unit for an inspection and the tenant's refusal to let them enter;
- A typewritten transcript of a message left by the tenant on the building manager's voicemail on February 1, 2010;
- An affidavit from a consultant with the landlord dated and notarized on February 12, 2010;
- A copy of a letter dated March 19, 2009 from the landlord to all residents regarding the next stages in the renovations of the building and individual rental units;
- Copies of 4 – 2 Month Notices to End Tenancy for Landlord's Use of Property over the last two years to other tenants for renovations; and
- A copy of a tenancy agreement signed by the parties on March 25, 2009 for a month to month tenancy for monthly rent of \$580.00 due on the 1<sup>st</sup> of the month and a security deposit of \$280.00 had been paid.

The tenant provided testimony that she did not believe she had to vacate the rental unit for the renovations because her daughter had had some renovations completed and was not required to move out. She also testified that a neighbour of her daughter's also was not required to move out prior to renovations to her unit.

The landlord contends the scope of the renovation plan for the applicant tenant's rental unit are substantially greater than those carried out in the other units noted by the tenant. The landlord's agents, witnesses and documentary evidence indicate that the kitchen and bathroom will require complete dismantling as well as painting of all walls, closets, and doors; replacement of flooring throughout the rental unit.

The landlord states the water will need to be turned off for extended periods of time and electrical service will be intermittently interrupted. The landlord's witnesses stated that all cutting, building, cabinet assembly and tool storage must occur within the rental unit as the residential property has no area to work in. As a result the witnesses indicate that there will be a mess in the rental unit that will be a health and safety hazard for the tenants.

The landlord contends that they could do smaller renovations such as painting or resurfacing in rental units that have fewer tenants, such as two. But because this is a

larger renovation and there are more than two occupants in this rental unit, the contractor indicates he must have a vacant rental unit. As well, the landlord contends that in previous small renovations with fewer tenants the tenants have not been all that accommodating during the renovations which would impede their ability to complete these more major renovations.

At the time of the hearing the landlord confirmed that there was at least one vacant rental unit. The landlord was showing that rental unit to a potential tenant after the hearing.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

There was no evidence presented questioning the good faith intention, on the part of the landlord, to complete the renovations, at question is whether or not the renovations require the rental unit to be vacant to the extent that requires the ending of a tenancy.

I am not persuaded by the tenant's evidence that other tenants have not had to move, including her daughter, when they had renovations completed. I accept that these other renovations were less extensive than the proposed renovations to this rental unit, as submitted by the landlord.

I also accept the complete renovations will take from one to two months; however, I am not convinced that the rental unit requires vacant possession for the duration of the entire project. By the landlord's witnesses' testimony, the need for vacant possession relies very heavily on the need for the contractors to assemble cabinets; use as a workspace; and use as tool storage. Landlord or contractor convenience is not sufficient grounds to end the tenancy.

The removal of the kitchen cabinetry and deconstruction of the bathroom will by definition prevent an occupant from using cooking or cleaning facilities in the kitchen for a small period of time and the tenant has indicated a willingness to make alternate arrangements for short periods of time. As well, the landlord had, at the time of the hearing, other vacancies in the residential property that could be made available to the tenant for those short terms.

From the testimony provided it is clear that this will be a substantial renovation and through the submission of the tenant's application to dispute this notice to end tenancy it is clear that should she continue to maintain the tenancy the completion of the renovations will require extensive cooperation and accommodation on the entire tenant's family's part.

Conclusion

I grant the tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Personal Use dated December 31, 2009 and find the tenancy to be in full force and effect.

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: February 26, 2010.

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Dispute Resolution Officer