



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

CNL, MNDC, OLC, RP, FF

### Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to make repairs to the rental unit; and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution. At the hearing the Tenant stated that her application for an Order requiring the Landlord to comply with the *Act* relates to her belief that the Notice to End Tenancy was not served in accordance with the *Act*.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Landlord stated that she served a package of evidence to a male at the rental unit, whose name she does not know, on August 31, 2010. She stated that she believes the male's name is "Robert", she believes he is in his twenties; and she believes he lives in the rental unit.

The Tenant stated that she does live with a male named Robert but that she has not received a package of evidence from that male, as she left the country on August 26, 2010 and she will not be returning until September 13, 2010.

I find that the Landlord has served the package of evidence in compliance with section 88(e) of the *Act* and rule 4.1 of the Residential Tenancy Branch Policy Guidelines. I find, however, that the Tenant has not had an opportunity to review the evidence submitted by the Landlord as she has been out of the country since the evidence was served. I find that the Tenant did not have the opportunity to review this evidence, in part, because she did not make arrangements to have this evidence forwarded to her and, in part, because the Landlord delayed serving the evidence to her until eight days before the hearing, even though the hearing has been scheduled since July 19, 2010.

In the interests of ensuring that the Tenant has the opportunity to consider the Landlord's evidence, I determined that it would be appropriate to adjourn this hearing until the Tenant has returned home. The Landlord was given the opportunity to proceed with the hearing at this time; to provide oral testimony regarding any evidence contained in his evidence package; and to adjourn the hearing at any point in the hearing if he determined that he needed to rely on physical evidence contained in the evidence package. The hearing proceeded on September 08, 2010 and was concluded without the need to refer to physical evidence contained in the Landlord's evidence package.

#### Issue(s) to be Decided

The issues to be decided are whether a Two Month Notice to End Tenancy for Landlord's Use of Property should be set aside; whether the Tenant is entitled to compensation for upgrades she made to the rental unit; whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2003 and that the Tenant is currently required to pay monthly rent of \$1,291.69 on the first day of each month.

The Agent for the Landlord stated that a Two Month Notice to End Tenancy for a Landlord's Use of Property was mailed to the Tenant on July 13, 2010 and the Tenant acknowledged receiving the Notice to End Tenancy in the mail. The Two Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by September 30, 2010 and that the reason for ending the tenancy was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that the Two Month Notice to End Tenancy was served on the Tenant because the Landlord's son and girlfriend intend to move into the rental unit. He stated that his son is currently living in a small guest suite that is owned by the Landlord; that the guest suite is too small for his son and his son's girlfriend and that they would prefer to live in this rental unit as it is larger; that he has other rental properties but his son prefers this rental property as it is a single family dwelling, it is within walking distance of amenities and bus service, and it is in a pleasant rural setting; that he owns other properties in Victoria, only two of which are vacant; that one of the vacant properties is a mobile home and is too small for his son and girlfriend; that the other vacant property is in a state of disrepair and is not suitable for occupation; that he intends to renovate and improve this rental unit while his son is living in it; and that he elected to end this tenancy because it is the rental unit that he wants his son to occupy.

The Tenant stated that he does not believe that the Landlord's son intends to move into the rental unit because the Landlord owns rental property that is more centrally located and is closer to amenities and because this property is in worse condition than other properties owned by the Landlord and she finds it highly unlikely that his son would prefer to live in this particular rental unit.

The Tenant contends that she has made many repairs to the rental unit since she moved into the rental unit and she believes that the Landlord is attempting to end this tenancy because the Landlord is displeased that the Tenant made repairs to the roof without permission from the Landlord and is asking to have repairs made to the rental unit.

The Agent for the Landlord stated that the Landlord has examined the roof of the house; that the Landlord has determined that the roof needs to be replaced; and that the roof will be replaced in the near future. This testimony is corroborated by an email, dated June 03, 2010, that was submitted in evidence by the Tenant, in which the Agent for the Landlord advised the Tenant that the Landlord has determined that the roof needs replacing.

The Tenant is seeking an Order requiring the Landlord to make repairs to the roof of the main house, to repair a toilet, and to repair taps.

The Tenant is seeking financial compensation for repairs that she made to the roof on an outbuilding on the rental property, although she acknowledged that she did not provide the Landlord with copies of receipts for those repairs.

### Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In the circumstances before me, I find that the Tenant has submitted insufficient evidence to refute the Landlord's claim that his son intends to move into the rental unit.

I find that the Landlord's testimony that his son and son's girlfriend wish to reside in this rural setting and that the Landlord intends to renovate the property to meet the son's needs was credible. I find that the Tenant's belief that the Landlord's son would "prefer" to live in other rental properties is highly speculative and is based on what she believes would be better suited for the son.

I find that the Tenant's contention that she has "improved" the property since moving into it in 2003 does not cause me to conclude that the Notice to End Tenancy was not served in good faith. Firstly, the *Act* does not prevent a landlord from regaining possession of a rental unit that the tenant has improved over time even if the landlord has not compensated the tenant for improvements that have been made. Secondly, the

fact that improvements have been made to the rental unit tends to corroborate, rather than refute, the Landlord's testimony that his son intends to occupy the rental unit.

I find that the Tenant's contention that the Notice to End Tenancy was served, in part, because she had asked the Landlord to compensate her for repairing a roof on an outbuilding does not cause me to conclude that the Notice to End Tenancy was not served in good faith. I find that ending the tenancy would have no impact on the Landlord's obligations to compensate the Tenant for repairs, providing the Tenant complied with the *Act* prior to making those repairs.

I find that the Tenant's contention that the Notice to End Tenancy was served, in part, because she asked the Landlord to repair the roof on the house does not cause me to conclude that the Notice to End Tenancy was not served in good faith. I find that the Landlord intends to replace the roof; that the Tenant was informed that the Landlord knew the roof needed replacing before the Landlord served the Notice to End Tenancy; and that the roof will need to be replaced regardless of whether this tenancy ends.

As this tenancy is ending on September 30, 2010, I find that it is unnecessary to issue an Order requiring the Landlord to make any repairs to the rental unit.

I find that the Tenant's claim for compensation for roof repairs is premature, as she has not yet provided the Landlord with receipt(s) for roof repairs. Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for emergency repairs only if the tenant gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. Without making a determination on whether the Tenant is entitled to compensation for the repairs to the roof, I find that it was certainly premature to file an Application for Dispute Resolution without first providing the Landlord with a copy of the receipt and making a request for formal compensation. On this basis, I dismiss the Tenant's claim for compensation for repairs to the roof, with leave to reapply on that specific issue.

### Conclusion

I hereby dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use of Property; I uphold the Notice to End Tenancy that was served on the Tenant; and I find that this tenancy shall end on September 30, 2010, in accordance with the Notice to End Tenancy that was served by the Landlord.

I find that the Tenant's application is without merit, and I therefore dismiss her application to recover the filing fee from the Landlord that was paid for filing this Application for Dispute Resolution.

The Landlord and the Tenant are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of

the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two month's rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 09, 2010.

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Dispute Resolution Officer