



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

CNL, PSF, MNDC, FF

### **Introduction**

This is the Tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use; for an Order that the Landlord provide services or facilities required by law; for a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee of this application from the Landlord.

Both parties were represented at the Hearing, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### **Issue(s) to be Decided**

- (1) Should the Notice to End Tenancy be cancelled?
- (2) Is the Tenant entitled to an Order that the Landlord repair the refrigerator, and for a reduction in rent until the repairs are concluded?

### **Background and Evidence**

#### **Facts on which the parties agreed:**

The Landlord issued a 2 month Notice to End tenancy on September 17, 2010, and slipped the Notice under the Tenant's door on or about the same day. On September 28, 2010, the Tenant filed an Application for Dispute Resolution seeking to cancel the

Notice to End Tenancy and obtain an Order that the Landlord make repairs to the refrigerator. The Hearing took place on October 29, 2010, but neither party appeared. The Dispute Resolution Officer dismissed the Tenant's application with leave to reapply. The Tenant re-applied on November 2, 2010.

The Landlord seeks to end the tenancy because he states he wants to redo the hardwood floors in the rental unit and install new kitchen cabinets.

Tenant's agent's testimony:

The Tenant's agent testified that he believes the Landlord may be trying to end the tenancy because he wants to make more substantial renovations, i.e. increase the number of bedrooms in the rental unit. The Tenant's agent testified that the Landlord would need building permits for this kind of renovation and that the Tenant has received information from the City Building Department that no such permits have been issued. The Tenant's agent testified that the Building Inspector came to the rental property two weeks ago and discovered that the Landlord had done unauthorized work on three other suites in the building (i.e. increased the number of bedrooms) without a permit and has ordered the Landlord to put the rental units back the way they were.

The Tenant believes that the Landlord issued the Notice to End tenancy in retaliation for the Tenant requesting repairs. The Tenant's agent testified that the Tenant's fridge was not working properly, causing food spoilage. The Tenant told the Landlord about the refrigerator in August, 2010, but the Landlord has not yet fixed the refrigerator. The Tenant seeks an Order that the Landlord repair the refrigerator, along with a reduction in rent until the refrigerator has been repaired in the amount of \$200.00 per month. The monthly rent is \$902.00.

Landlord's agent's testimony:

The Landlord's agent stated that the Landlord does not require permits in order to

refinish the hardwood floors and install new cabinets. The rental unit will have to be vacant for 1 or 2 weeks in order for this work to be done.

The Landlord's agent confirmed that the Building Inspector had told the Landlord to return the other suites to their original condition because the Landlord did not have permits to add another bedroom to the suites.

The Landlord's agent confirmed that the Tenant had advised that his refrigerator was not working properly in August, 2010. The Landlord's agent inspected the fridge and made arrangements to replace the fridge, but the Landlord cancelled the order.

### **Analysis**

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, and the Tenant has questioned the "good faith" intent of the Landlord, the burden is on the Landlord to establish that he truly intends to do what the Landlord indicates on the Notice to End Tenancy. The Landlord must establish that he does not have an ulterior motive for ending the tenancy as his primary motive.

The Landlord's agent stated that repairs to the floors and renovations to the kitchen would require the rental unit to be vacant for 1 to 2 weeks.

The reason given to end the tenancy on the Notice is based upon section 49(6)(b) of the Act which provides:

(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:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

[emphasis added]

The Supreme Court of British Columbia in *Berry v. British Columbia*, 2007 BCSC 257.

The court found that the requirement that a rental unit be vacant has two dimensions that must be satisfied in order to determine that the tenancy must end:

1. As a practical matter, does the unit need to be empty for the renovations to take place? The fact that renovations might be more easily or economically undertaken if the unit was empty is not sufficient. To warrant an end to the tenancy, renovations must only be possible if the unit is unfurnished and uninhabited.
2. The landlord must establish that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the tenancy.

The court also noted that if the unit needs to be vacant for only a short time, it is irrational to think that a landlord could terminate the tenancy.

The Landlord cancelled an order to replace the Tenant's broken fridge and yet purports to be seeking to end the tenancy because he wishes to refinish the hardwood floors and do kitchen renovations in the rental unit. The Landlord's agent did not provide an explanation for why the Landlord would renovate a kitchen and not replace a defective refrigerator.

The Landlord has made extensive renovations to other suites in the rental property without permits. The Tenant believes the Landlord intended to do the same with the rental unit until the Building Inspector discovered the unauthorized renovations to the other suites. This was discovered after the Notice to End Tenancy was issued.

The Landlord did not provide copies of building permits. The Landlord has not provided sufficient evidence that he does not require building permits in order to do renovations to the rental unit.

For the reasons stated above, I find that the Landlord has not established that, at the time of issuing the Notice to End Tenancy, he intended merely to refinish the hardwood

floors and put in new kitchen cabinets. The Landlord has not established that there was no ulterior motive for seeking to end the tenancy. The Tenant's application to cancel the Notice to End tenancy is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been without a properly functioning refrigerator since August, 2010. The Landlord is aware that the refrigerator is not working properly and has not repaired or replaced it. The Tenant has suffered a loss. I hereby order the Landlord to provide the Tenant with a fully functioning refrigerator. I allow the Tenant's application for a rent reduction in the amount of \$100.00 per month until the Landlord provides the Tenant with a fully functioning refrigerator.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord.

### **Conclusion**

The 2 Month Notice to End Tenancy for Landlord's Use of Property is cancelled and this tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

Pursuant to Section 72(2)(b) of the Act, I order that Tenant is entitled to deduct the amount of \$50.00 from future rent due to the Landlord, in recovery of the filing fee.

The Landlord is hereby ordered to provide the Tenant with a fully functioning refrigerator. The monthly rent will be reduced by \$100.00 per month until the Landlord provides the Tenant with a fully functioning refrigerator.

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: November 26, 2010.

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