



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, OPL, OCL, FF

### Introduction

This hearing was convened in response to applications by the tenants and the landlord.

The tenants' application is seeking orders as follows:

1. Cancel a two month notice to end tenancy for landlord to make repairs to the rental unit that require the rental unit to be vacant.

The landlord's application is seeking orders as follows:

1. An order for possession based on the two month notice; and
2. Recover the filing fee from the tenant.

Both parties appeared and were provided the opportunity to present their evidence and make submissions to me.

### Issue(s) to be Decided

Are there grounds to set aside and cancel the notice to end tenancy?

### Background and Evidence

The tenancy began on May 1, 2007 with a previous landlord. Rent in the amount of \$1,050.00 is payable on the first of each month. A security deposit of \$525.00 was paid by the tenants. On October 31, 2011, the present landlord purchased the property and served the tenants with a two month notice to end tenancy. The notice has an effective date of December 31, 2011.

The reason indicated in the notice to end tenancy is:

- All the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
- 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 testified that on the two month notice she mistakenly ticked off two boxes. The box that indicates the landlord or close family member intends to occupy the rental unit is wrong. The box that indicates the reason for the tenants to vacate the rental unit is for repairs is correct.

The landlord testified that the residential property is composed of five townhouses. Each townhouse is two stories high. That the previous owners of the residential property had neglected the units and there are extensive water problems that have caused mould and mildew in the rental units. It is the landlord's intention to fix the water problem, and extensively renovate the five townhouses.

The landlord further testified that the tenants want to remain in their unit, but since they need to vacate the unit she generously offered the tenants the first unit that is renovated, but the tenants do not want to pay the higher rent required by the landlord.

The landlord testified that the reason why the tenants must vacate the unit is presented in a building inspection report that was prepared on October 8, 2011, however, the landlord sent only portions of what she felt was relevant to the subject unit.

The Building Inspection Report indicates the following:

Roof Trusses:

Condition: Roof truss broken at both sides of ridge. Consult structural engineer for evaluation.

Roof Sheathing:

Condition: Extensive heat scorching of sheathing noted. This may result in decreased fire resistance of the roof sheathing.

Mould/mildew:

Condition: Some areas of mildew visible in upper attic. This may have been the result of no vents in the original roof. Consult Health Canada if this is a concern.

Bathroom – unit #2:

Moisture meter indicates water infiltration behind tiles. Probable hidden damage to substrate (likely gypsum wallboard) and possible damage to wood framing members. Replace of the tub surround is recommended. Tub enclosure is utilizing old, original taps, filler spouts and shower heads.

Mould/mildew - unit #2

Bedroom unit #2: Mould on ceiling of master bedroom closet. Further evaluation and improve as necessary.

The landlord further testified that it is very dangerous for the tenants to reside in the rental unit, with mould and mildew being present. Once they start to work in the bathroom, they may discover extensive water damage. As an example the landlord described a different rental unit that needed to remove all the drywall and flooring in the bathroom to let the wood dry out for approximately a week, the smell of mould and mildew was horrible. They also had to replace a portion of the ceiling below the bathroom in this unit. The landlord is concerned that when they start working in the subject rental unit that the bathroom may be in the same condition as the other unit was and would result in the bathroom being unusable for several weeks. There is only one bathroom in this rental unit and the tenants cannot live without bathroom facilities. The landlord also indicated that the rental unit is very small for two people and a large dog and that the workers do not want to be working around the tenants belongings.

The tenant testified that the landlord offered to rent them the first rental unit that was renovated at the rate of \$1,600.00 per month, and the tenant indicated that would be a rent increase of 60%. He does appreciate that the landlord is doing a lot of work on the building, but submits that most of it is cosmetic. He does not feel that it is unsafe to reside in the rental unit while the landlord makes the required repairs.

The tenant testified that the landlord has already advertised online all the rental units for rent at the increased rate and that there is a "For Rent" sign posted on the property.

The tenant testified that construction workers are on site already, the roof work has already started as well as renovation to other rental units.

The tenant further testified that there is no mould or mildew in his bathroom, but the tub surround is very old and does need to be replaced, but there is no evidence of water damage showing on ceiling below the bathroom.

The tenant testified that the mould that was found in the master bedroom closet is because unit one has been vacant for three years and has not been heated properly and the closet shares the wall with unit one.

The tenant testified that they will accommodate the landlords schedule to make sure they have access to the rental unit, when the work is scheduled to be done. They will make alternate arrangements for their dog during that period, and if they need to move their furnishing around or cover them up they will accommodate that. The tenant also indicated that they have family that live a couple of blocks away and if the rental unit is uninhabitable for short periods of time they are able to stay with their family.

The tenant further testified that they do not want to move, they want to stay in the rental unit, and they do not feel that it is unsafe.

When I directly asked the landlord - other than the repairs to subject unit bathrooms - if the balance of the work is cosmetic, the landlord refused to answer the question.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### Roofing/sheathing

The tenants have been residing in the rental unit while extensive work has been done of the roof. There appears to be no requirement for the unit to be vacated for the roofing or sheathing to be completed.

### Mould

The Landlord has presented no evidence that the Health Authority has been contacted as suggested in the building inspection report. If the landlord had concerns that the tenants are in danger from mould or mildew in the rental unit during the renovations a report from the Health Authorities should have been requested and presented at this hearing.

### Bathroom

I appreciate that it may be easier for the construction crew to complete the renovation while the rental unit is vacant and that the bathroom may be unusable for a short period of time as suggested. However, the tenants have indicated willingness and a capacity to vacate the rental unit if the bathroom becomes unusable for a short period of time.

I find that the landlord's testimony is speculative.

I am not satisfied that the landlord has met the requirements of showing that the renovations by their nature, are so extensive as to require the unit to be vacant. The building inspection report does not indicate the building is uninhabitable, there is no report from Health Canada to say that there are health concerns regarding the mould, the landlord has not provided any permits that might indicate the extensiveness of the repairs and there are no reports or letters from any contractor that say the units must be vacant in order for the work to be completed. Therefore, I grant the tenant's application and cancel the notice to end tenancy.

### Conclusion

I find that the evidence before me does not establish that the renovation to be completed on the rental unit requires vacant possession. I grant the tenant's application and order that the notice to end tenancy dated October 31, 2011 be cancelled. Tenancy will continue until ended in accordance with the Act.

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 23, 2011.

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Residential Tenancy Branch