



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel a 10 Day Notice to End Tenancy for unpaid rent; to cancel a Two Month Notice to End Tenancy for landlord's use of the property; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the landlord withdrew the 10 Day Notice to End Tenancy for unpaid rent.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to have the Two Month Notice to End Tenancy cancelled?

### Background and Evidence

Both parties agree that this tenancy started on May 25, 2002. Rent for this unit was \$850.00 but was reduced to \$650.00 at a previous hearing held on February 02, 2012 until such a time as the landlord completes the required repairs to the rental unit.

The landlord testifies that he served the tenants with the Two Month Notice to End Tenancy on April 10, 2012 by posting the Notice to the tenants' door. The Notice is dated April 04, 2012 and has an effective date of June 15, 2012. The landlord testifies that he gave the reason on page two of this Notice because he now has all the 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 testifies that he was ordered to decommission the lower suite and has a permit in place to do that work. The landlord testifies that that permit states the landlord must also ensure the entire building is free flowing and interconnected. This means that there are to be no internal locking doors that could be used to divide the building into separate portions and all levels of the single family dwelling are to be interconnected by an internal free flowing staircase.

The landlord testifies that he now requires the upper tenants to move from their suite as they are preventing the landlord from making a free flowing pathway between the two suites. The landlord testifies that he is required to take off doors and door frames and has to redo the bathroom and kitchen in these tenants suite. The landlord states this work will require vacant possession of the tenants' suite.

The landlord testifies that this work to the tenants' suite does not require a permit as the landlord is not changing any fixtures and the landlord also testifies that the City informed the landlord that any work done to the upper suite would be covered under the permit issued for the decommissioning of the lower suite.

The landlord requests that the Two Month Notice to End Tenancy is upheld and seeks an Order of Possession effective from June 15, 2012.

The tenants dispute the landlord's claims. The tenants testify that they do not believe the landlords reason given on the Two Month Notice to End Tenancy. The tenants call into question the landlords reason as to why he would renovate their suite without first making the repairs to the roof as detailed in the last hearing held on February 02, 2012. The tenants dispute the landlord's testimony that the permit in place is valid for their suite as well as the downstairs suite. The tenants state the Permit in place which they have provided in evidence clearly shows that the permit is to decommission the downstairs suite and any other work mentioned on the permit such as door locks to make the two suites interconnecting would not require them to vacate their suite.

The tenant (PL) testifies that he went into the city office to speak to the officer there about the landlords permit and was told the permit that the city had issued was solely to decommission the secondary suite and had nothing to do with the upstairs suite. The tenants seek therefore to have the Two Month Notice to End Tenancy cancelled.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a landlord serves tenants with a Two Month Notice to End Tenancy the landlord has the burden of proof to show that the reason given on the Notice is sufficient reason to end the tenancy. When the tenants call into question the good faith of the landlord in issuing this Two Month Notice the landlord is required to provide corroborating evidence to satisfy the burden of proof to show that the reason on the Notice is a valid reason.

In this matter the landlord has argued that he has all the necessary permits and approvals in place as required by law to carry out work in the upper unit which would require the tenants to vacate the upper unit. I have carefully considered the permit provided in evidence and despite the landlords arguments I am not satisfied that this permit is for the repair work to the upper suite. The permit clearer refers to the

decommissioning of the lower suite and ensuring there are no internal locking doors to divide the building into separate portions and to ensure all levels are interconnected. There is no mention in this permit that any of this work applies to the upper suite and does not notify the reader that any internal doors need to be removed but just that they must not lock. The permit states that the landlord must ensure that there is a free flow between the suites. The permit does not refer to any renovations or repairs to the tenants' suite that would require vacant possession.

The tenants question the landlord's good faith intent in issuing this Notice as the landlord has still failed to carry out any repairs as previously ordered in the hearing held on February 02, 2012. I refer the parties to the Residential Tenancy Policy Guidelines # 2 which deals with the good faith requirement when ending a tenancy. This guideline states, in part, that if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlord has testified that the City informed him that the permit was for both suites however I clearly find that this is not the case. The landlord then under questioning testifies that he does not require a permit for the upper suite as he intends to replace the bathroom and kitchen and take up some floors. While a landlord may not require a permit for any minor work carried out on a suite I am not satisfied that the landlord does intend in good faith to carry out this work as the landlord has provided no corroborating evidence to support his claim such as plans, drawings or estimates for this work. I have further doubts of the landlord's intent as the landlord has failed to abide by a previous Order for the landlord to complete repairs to the rental suite within one month of receiving that Order dated February 03, 2012.

Consequently, I am not satisfied that the landlord has an honest intention to carry out work in the rental unit which would require vacant possession of the rental unit and that

the landlord is not motivated by malice and the landlord has no ulterior motive to seek an unconscionable advantage. I therefore uphold the tenants' application and set aside the Two Month Notice.

### Conclusion

The tenants' application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated April 04, 2012 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from there next rent payment when it is due and payable to the landlord.

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: May 10, 2012.

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Residential Tenancy Branch