



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, OLC and FF

### Introduction

This hearing was convened on the tenant's three applications to have set aside two-month Notices to End Tenancy for landlord use dated April 26, 2012 and setting end of tenancy dates of June 30, 2012. The tenant also sought a monetary award for damage or loss under the legislation or rental agreement, an order for landlord compliance and recovery of the filing fee on each of the applications.

It is noteworthy that the applications represent three single room occupancy units, one of which is currently occupied by the tenant, and the other two by other parties with whom the tenant has entered into rental agreements.

By way of explanation, the file numbers and unit numbers are not in numerical order on the cover sheet as the numerically middle suite used by the tenant as a mailing address was made the parent file on the application.

As a preliminary matter, the tenant had earlier provided submissions from her physician and a government agency noting that the tenant is challenged by an auditory processing disorder and asking that consideration be given to facilitate her understanding of the proceedings. .

As is common practice when such matters are known to the branch, allowances were made to accommodate the tenant including early access to the hearing room, three or four recesses to permit the tenant to consult with her advocate, and ample opportunity to ask questions.

With the exception of the occasional interruption to question the relevance of submissions by the tenant, legal counsel for the landlord also exercised notable consideration.

Issue(s) to be Decided

Were the Notices to End Tenancy issued in good faith and is the probability of their implementation of the stated reasons sufficiently proven to uphold them or has the tenant proven ulterior motive to a degree that would warrant setting them aside?

Do the tenants' claims for monetary compensation for loss or damage under the rental agreement or legislation warrant an award?

Is an order for the landlord to comply with the legislation and rental agreement warranted?

Background and Evidence

As noted, there are three separate tenancy agreements, applicable to three single occupancy rooms equipped with refrigerators and hot plates and sharing a washroom at the end of the hall.

The rental agreement for unit 232 began on September 1, 2003, and is currently occupied by the tenant following a two month period during which she had entered an agreement with another party.

The rental agreement for unit 231 began on August 18, 2007, and is currently occupied by a party to with whom the tenant entered into an agreement starting on June 1, 2011.

The rental agreement for unit 233 began on February 1, 2008 and is currently occupied by a party with whom the tenant has a six-month fixed-term agreement which started March 1, 2012 and is set to end on September 1, 2012.

During the hearing, the tenant gave explanation that the landlord had authorized her to rent out the other two rooms after they had a number of interactions arising from problematic tenants who had been given tenancies by the building managers.

The Notices to End Tenancy in question are dated April 26, 2012 and the tenant acknowledges having received them on April 28, 2012. The end date set by the notices is June 30, 2012.

These tenancies had been the subject of a previous hearing on earlier notices that were withdrawn, and verified as unenforceable at hearing, as the necessary permits had not been issued at the time.

The reason cited on the present two-month notices is: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a matter that requires the rental unit to be vacant."

As is customary when a tenant has applied to set aside a Notice to End Tenancy, the landlord's counsel was asked to set out the purpose and evidence supporting service of the Notices to End Tenancy for landlord use.

Counsel gave evidence that the rental units are in a building built over a century ago, now part of a larger complex that has been subject to ongoing renovations for several years. Most recently, he said, about a year ago, the building underwent an electrical upgrade at a cost of \$150,000.

Counsel stated that the current notices were served to permit the landlord to continue the renovation program and specifically to blend the three existing single occupancy rooms into two self contained suites. He submitted into evidence a set of floor plans and strip-out permits issued April 26, 2012 in support of the notices. One of the permits was dated May 15, 2012 but I find it entirely probable that the delay was caused by an error in the issuing office as stated by counsel.

The tenant submitted in excess of 100 pages of evidence in support of her assertion that the notices were not served in good faith but were, in fact, another in a series of efforts by the landlord to end her tenancy, usually by letter expressing the wish or intention to end her tenancy.

The tenant stated that conflicts began in 2004 when she had implored the building manager to remove problem tenants from the building, including drug users and mentally ill tenants.

She submitted documentary evidence around theft of soap from the laundry room in 2006, and in 2009, the tenant's bicycle was stolen due to the alleged negligence of the landlord.

The tenant stated that she was further frustrated by the landlord's failure to repair and paint the shared bathroom despite her pleadings over a two-year period.

The tenant also stated that in May of 2011, she first heard of the possibility of her own eviction for renovations when she complained of an electrician working in one of the units without having given notice and was advised by an official of the landlord that an end of her tenancy was imminent for planned renovations.

The tenant stated that these were only a sample of ongoing loss of her quiet enjoyment of the rental unit and that she had lived under the apprehension of eviction for much of the tenancy.

### Analysis

The *Residential Tenancy Act* makes provision for landlords to regain possession of their rental unit under specified circumstances and conditions, including where such possession is necessary to demolish or renovate under section 49(6) of the *Act*.

The *Act* guards against frivolous use or misuse of this provision by requiring the landlord to provide the equivalent of one-month's free rent in conjunction with such notice and a penalty of the equivalent of an additional two months' rent if the landlord does not perform as claimed in the notice, in addition to other possible damage claims.

In the present matter, the *Act* imposes the further requirement that a landlord giving notice for renovations must have necessary permits in hand.

Given the permits submitted into evidence and, on the probabilities that the renovations are indeed part of an ongoing program to upgrade the century old building, and given the claimed estimate of \$8,000 to \$10,000 for the first phase of the work with a multiple of that as the ultimate cost, I find, on the balance of probabilities that the landlord genuinely intends to carry out the work indicated on the notice.

As to the tenant's belief that the notices were issued merely to end her tenancy, I find that her evidence must be tempered with considerations that:

- They are so far removed in time that I cannot find a cause-effect relationship between the events in question and the notices in dispute;
- They represent but one side of the events in question, and I cannot estimate the degree, if any, to which the tenant may have contributed to the conflicts;

- There were appropriate remedies available to the tenant at the time to address the issues in question such as an application pertaining to loss of quiet enjoyment, or repairs, etc;

Even if taken at face value, I find that the tenant's assertions do not sufficiently impair the good faith of the Notices to End Tenancy to warrant setting them aside.

Therefore, I upheld the three Notices to End Tenancy of April 26, 2012.

On hearing that determination, counsel for the landlord requested Orders of Possession to enforce the notices under section 55(1) of the *Act* which compels the issuance of such orders when a tenant's application to set aside is dismissed or the notices upheld.

On a request from the tenant to do so, the landlord agreed to vary the end date for unit 233 from June 30, 2012 to August 31, 2012. The request was to enable the tenant to honour her fixed term agreement with the party in that unit. The landlord agreed to the change, noting that initial renovations could commence in the other two units which are adjacent to each other and across the hall.

Accordingly, I find that the landlord is entitled to the Orders of Possession, to take effect on June 30, 2012 for units 231 and 232, and to take effect on August 31, 2012 for unit 233.

The tenant's monetary claim was intended to address anticipated losses and is dismissed as premature.

The tenant's claim for an order that the landlord comply with the legislation and rental agreement is dismissed as moot given the imminent conclusion of the tenancies.

The tenant's request to recover the filing fee for this proceeding from the landlord is denied as the application has not succeeded on its merits.

Conclusion

The landlord's copy of this decision is accompanied by:

In the case of units 231 and 232, Orders of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on June 30, 2012.

In the case of unit 233, an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on August 31, 2012.

The tenant's claims for monetary compensation, a compliance order and recover of the filing fee are dismissed.

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: June 22, 2012.

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Residential Tenancy Branch