



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Diversified Properties Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, the landlord's agent and witness.

During the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in their Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in their Application seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The parties agree the tenancy began in May 2010 as a 1 year fixed term tenancy and converted to a month to month tenancy on May 1, 2011 for a current monthly rent of over \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$475.00 paid.

The tenant provided into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 15, 2013 with an effective vacancy date of July 31, 2013 citing 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 submits that they intend on renovating all of the rental units in the residential property and that they are attempting to complete these renovations within a reasonable time. The landlord intends to renovate 3 units at a time until all renovations are complete and that each unit should take approximately 60 days to complete.

The landlord submits that the work will include either replacing or restoring the flooring; replacement of interior doors; replacing the tub surround and sinks and kitchen cabinetry. The landlord has a budget of approximately \$15,000.00 per unit and fixtures will be removed near the start of the renovation and re-installed toward the end of the renovation after different aspects are completed. The landlord submits that because none of the work is considered to be a structural modification there are no requirements for permits.

The landlord submits that no or little renovation work has been completed in this residential property over the course of several years because there is such little turnover in occupancy but whenever possible the landlord seeks to make such renovations after a tenancy ends. However, in order to complete the renovations planned for this property they must have vacant occupancy of each unit.

The tenants submit that while they recognize that some renovations are required in the unit they also believe that some of the proposed changes are not necessary renovations and could wait until they end their tenancy in a year or two.

The tenants also submit that they would be willing to allow the landlord to make the more minor renovations and when it came time to complete the more difficult ones that they would move out of the rental unit and stay with friends and/or family and that they would continue to pay the full rent.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2 states that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice, and no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy.

The guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord has a dishonest purpose.

If good faith is called into question the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy and that they have no other purpose that negates the honesty of the intent or ulterior motive.

In the case before me, I find there is no evidence questioning the landlord's intent to complete the repairs and renovations.

From the evidence before me, and the testimony of both parties I find the parties acknowledge that there will be a requirement at least for part of the renovations planned by the landlord to have the rental unit vacant. While the tenants have made an offer to continue paying rent and move out during those particular times there is no provision, under the *Act*, that would require the landlord to accept such conditions.

From the testimony of the landlord's witness, who will be performing the renovation work, I accept that due to the nature of the renovations the kitchen and bathroom will be dismantled for nearly the entire duration of the rental unit and as such the unit would be uninhabitable and as such require the unit to be vacant to have to complete the renovations.

For these reasons, I dismiss the tenants' Application in its entirety. However, I note that the landlord remains at liberty to negotiate an alternative to ending the tenancy based on the offer of the tenants to continue paying rent and move out for the time required for the vacancy.

### Conclusion

Based on the landlord's verbal request for an order of possession, I find the landlord is entitled to an order of possession effective **July 31, 2013 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 27, 2013

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Residential Tenancy Branch

