



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL, RP

### **Introduction**

This Hearing dealt with the Tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) and for an Order that the Landlord make regular repairs to the rental unit.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord at his residence. It was also determined that the Tenant provided two evidence packages to the Landlord on July 9, 2013 and July 23, 2013. The Tenant did not provide the Landlord with her third evidence package and therefore it was not considered. The Landlord provided no documentary evidence to the Residential Tenancy Branch or to the Tenant.

### **Preliminary Matter**

During the course of the Hearing, the Tenant stated that she misunderstood the application form and did not intend to apply for a repair Order. The Tenant withdrew that portion of her application.

### **Issue to be Decided**

Should the Notice issued June 29, 2013 be cancelled?

### **Background and Evidence**

The Tenant provided a copy of the Notice in evidence. The Landlord testified that he hand delivered the Notice to the Tenant with a witness present. The Landlord was not certain what day he served the Tenant, but the Tenant acknowledged that she received the Notice on June 29 or June 30, 2013.

The Landlord has alleged the following reason on the Notice for ending the tenancy:

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 he is going to add a 6 x 12 foot extension to the rental unit, which will require a foundation. He stated that he also intends to put in a new power panel and a washer and dryer, cover the deck and put in new doors and windows.

The Landlord stated that the municipality does not require him to have permits to do the work because the addition is under 100 square feet. He stated that the power will have to be shut off. He stated that he did not know how long it would take to complete the renovations and that it could take a couple of months to do the work because he will be doing it all himself, except for the electrical work. The Landlord stated that he had the approval of BC Hydro to put in another power panel.

The Tenant stated that she believes the Landlord wants to end her tenancy for an ulterior motive. She testified that she and the other tenants in the rental property had a disagreement with respect to her use of the garden area and that the other tenants have threatened to give their notice if she does not move out. The Tenant stated that the other tenants rent a larger unit and therefore pay more rent. She testified that the Landlord told her that it was all about the money.

The Landlord stated that he is retired and depends upon the rental property for his income. He stated that he needs to expand the size of the rental unit so that he can get more rent for it.

### **Analysis**

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;

[my emphasis]

The Landlord provided no documentary evidence with respect to permits or approvals and stated that he did not require permits. However, it is important to note that the Landlord did not provide a copy of BC Hydro's authorization for the additional power panel.

In determining whether the Landlord has met the remaining criteria of section 49(6) a two part test is applied: firstly, that the repair or renovation requires the rental unit to be vacant; and secondly, that the Landlord has shown a "good faith" intention to renovate or repair the rental unit.

The first test, that the repair or renovation requires the rental unit to be vacant, has been an issue before 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 admittedly does not know the extent of time that will be required to complete the renovations. Therefore, I find that the Landlord has not sufficiently demonstrated that any necessary emptiness can only be achieved by ending the tenancy.

I find that the Landlord has not demonstrated that he has all necessary approvals to complete the renovation, or that the rental unit must be vacant and empty to complete

the renovations, or that the only way to achieve the necessary emptiness is by ending the tenancy. Accordingly, I grant the Tenant's application to cancel the Notice without further exploring the Landlord's good faith intention with respect to ending the tenancy. The effect of this decision is that the tenancy shall continue.

### **Conclusion**

The Notice to End Tenancy issued June 29, 2013 is cancelled and the tenancy remains in full force and effect.

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: August 09, 2013

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Residential Tenancy Branch