



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNL

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated October 24, 2013 and effective December 31, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Should the Two-Month Notice to End Tenancy for Landlord's Use be cancelled?

### **Background and Evidence**

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy for Landlord's Use which indicated that:

*"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 they planned to repair all four rental units in the four-plex and a portion of this work has been completed. According to the landlord, they need to renovate the tenant's unit and this requires that the unit be vacated. The landlord made reference to written statements in evidence, from their repair contractor and their pest-control expert, indicating that the rental unit must be empty to begin the work.

The landlord acknowledged that they did not make any applications for permits because municipal authorization and inspections are not necessary for the nature of the planned renovations.

According to the landlord, even if the painting, flooring wall repairs could feasibly be done with the tenant still occupying the unit, their renovation contractor requires that the unit must be vacant. The landlord also pointed out that, due to the tenant's lifestyle, the vermin problems will persist as long as he occupies this unit.

When asked for details about the statement above, the landlord pointed out that the tenant's rental unit is kept in a filthy condition. The landlord testified that the tenant also has frequent guests, some of whom are former occupants of other units, and the landlord feels that these visitors contribute to the repeated re-infestation of vermin.

The landlord stated that they would not consider letting the tenant temporarily occupy one of the other finished suites in the complex pending the completion of until his rental unit.

The landlord is seeking an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use.

The tenant testified that he does not agree with the 2 month Notice and pointed out that the landlord has failed to prove that the unit must actually be vacated in order to do the proposed cosmetic repairs. The tenant stated that the work apparently would not involve plumbing, electrical or significant infrastructural work, as these kinds of alterations would necessitate applying for municipal permits.

The tenant stated that one of the written statements in evidence from one of the landlord's contractors was not based on a physical inspection of the unit, as this witness had never actually been on site. According to the tenant, all of the planned work can be done without the need to vacate the rental unit. The tenant testified that there is also a vacant unit in the complex that has already been renovated and the tenant is willing to move there temporarily while the landlord repairs and refinishes his unit, after which he could return.

With respect to the fumigation issue, the tenant testified that there is also no need to terminate a tenancy merely to ensure that pest control experts can successfully eradicate bugs and mice. The tenant pointed out that the landlord's stated belief that the tenant's "lifestyle" contributed to the infestation is based on biased presumptions, rather than facts. The tenant also took exception with the landlord's statement implying that the tenant's guests are somehow perpetuating the existence and proliferation of vermin. The tenant stated that he has a statutory right under the Act to welcome guests

into his home without interference from the landlord. The tenant pointed out that, as a Native elder the tenant feels a moral obligation to be accessible to offer support and guidance to people in need and this is his right.

The tenant believes that the Two Month Notice to End Tenancy for Landlord's Use has absolutely no merit and should be cancelled.

### **Analysis**

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was warranted and supported under the Act.

The Notice was given under section 49(6)(b) of the *Act*, on the grounds that the landlord has all necessary permits and approvals required by law, and intends in good faith repair the rental unit in a manner that requires the rental unit to be vacant.

I have been designated under Section 61 of the *Residential Tenancy Act* to conduct a hearing regarding this application to decide whether the Notice should be aside and the tenancy to continue, or whether the Notice should be upheld and the tenancy therefore to end on the effective date of the Notice. I find that the tenant's position is clear:

1. The landlord is not proceeding in good faith, a requirement under this section of the Act; and;
2. The unit need not be vacant and tenancy ended for the landlord to proceed with the renovation work and;
3. The landlord does not have permits required by law to complete the renovation nor has the landlord proven that there is no requirement for permits.

I find that the landlord's testimony and evidence did not suffice to defend against the above allegations. Even if I fully accepted the testimony of the landlord, I find that neglecting to submit supportive evidence to establish the precise nature and extent of the work, including the expected duration, the sequence of projects or the status of the initial preparations, there is no basis for me to conclude that the unit must be vacant.

I find that, other than the written opinions from a renovation contractor and pest control contractor, the landlord did not submit detailed data to prove that the unit must be vacated before the work can be commenced.

I also note that nothing was submitted to verify what the municipality's position was on the issue of permits and approvals to confirm that the matter was even discussed with city inspectors. I find that the landlord's testimony was deficient in establishing support for the landlord's position that this project could not proceed without ending the tenancy.

I find that, since the burden of proof was squarely on the landlord to satisfy the criteria under the Act, it was incumbent on the landlord to fill in gaps in the information calling into question the need to end the tenancy. I find that the landlord has not sufficiently met this burden.

Based on the testimony and evidence presented during these proceedings, I find that the criteria under section 49(6) has not been met in the face of the challenge put forth by the respondent.

Accordingly, I find that the tenant's application to have the notice cancelled must be granted. I hereby order that the Two-Month Notice to End Tenancy for Landlord's Use issued on October 24, 2013, is cancelled and of no force nor effect.

### **Conclusion**

The tenant is successful in the application and the Two Month Notice to End Tenancy for Landlord's Use is ordered cancelled and of no force nor 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: December 09, 2013

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Residential Tenancy Branch

