



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Amos Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, CNL, DRI, MNDC, MNSD, OLC, ERP, RP, PSF, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Cause; to cancel a Notice to End Tenancy for Landlord's Use of Property; for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for the return of all or part of the security deposit; to dispute an additional rent increase; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

At the hearing the male Tenant stated that they did not intend to apply to cancel a Notice to End Tenancy for Cause, as one has not been served. This claim was withdrawn.

The female Tenant stated that on April 10, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Respondent, via registered mail. The Landlord stated that the Respondent is her agent and that she has received these documents.

On April 10, 2014 the Tenant submitted 20 pages of evidence, including photocopied photographs, to the Residential Tenancy Branch. The female Tenant stated that on April 10, 2014 this evidence was sent to the Respondent with the Application for Dispute Resolution. The Landlord stated that she did not receive all of these documents.

On May 13, 2014 the Landlord submitted 35 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant, although she could not recall when it was mailed. The female Tenant stated that they received most, but not all, of these documents.

On April 24, 2014 one of the parties submitted 7 pages containing several small coloured photographs to the Residential Tenancy Branch. Neither party could recall submitting these photographs to the Residential Tenancy Branch.

Given the confusion with the evidence, the parties were advised that prior to considering any documentary evidence at the hearing, I will ensure the other party is in possession of the evidence. The only documents considered at the hearing were a copy of a tenancy agreement, signed by the female Tenant on February 04, 2013, and two Notices to End Tenancy. Both parties acknowledged that they were in receipt of these documents.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

I note that the Landlord exited the teleconference after being advised that I will be setting aside the Two Month Notice to End Tenancy, but before the hearing was concluded. Nothing relevant to my decision to set aside the Notice to End Tenancy was discussed after the Landlord exited the teleconference.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy. The balance of the Tenant's applications are dismissed, with leave to re-apply.

### Issue(s) to be Decided

Should a Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

### Background and Evidence

The Landlord and the Tenant agree that the Tenants moved into this rental unit on October 01, 2010. The parties agree that the female Tenant and the Agent for the Landlord signed a new tenancy agreement on February 04, 2013, a copy of which was submitted in evidence. Although the male Tenant is not named on this tenancy agreement, the Landlord and the male Tenant agree that they verbally agreed that he would also be a tenant in the rental unit.

The Landlord and the Tenant agree that the Tenants agreed to pay monthly rent of \$1,150.00 by the first day of each month.

The Landlord and the Tenant agree that on March 31, 2014 the Tenant was personally served with a Two Month Notice to End Tenancy, dated March 31, 2014. This Notice was signed by the Respondent and declared that the Tenant must vacate the rental unit by May 31, 2014. This Notice declared that the Landlord wished to end the tenancy because the rental unit will be occupied by the landlord, the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord and the Tenant agree that on April 03, 2014 the Tenant was personally served with another Two Month Notice to End Tenancy, dated March 31, 2014. This Notice is the same Notice that was served to the Tenant on May 31, 2014, however the reason for ending the tenancy on this Notice is 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 stated that there was a miscommunication between her and her agent, which resulted in the first Notice to End Tenancy being served in error. She stated that she did not intend to end this tenancy because she or a close family member intended to move into the rental unit.

The Landlord stated that she intends to completely renovate the main bathroom in the rental unit, which includes removing the drywall that has been damaged by mould, replacing the fixtures, and replacing the flooring. She expects this renovation will take approximately one week. She stated that there may be dangerous mould in the walls that would be disturbed during the repair/renovation, which could be unhealthy for the Tenants.

The female Tenant acknowledged there is some mould in the bathroom. She stated that there is a second bathroom in the rental unit and they are fully prepared to use that bathroom while the main bathroom is being repaired. She stated that they have a place to stay for a few days if mould is located in the bathroom that might be hazardous to their health.

The Landlord stated that she may also paint the rental unit, change some windows in the lower portion of the unit, install laminate flooring in some portions of the unit, and install new carpet in the bedrooms. She stated that she would like to complete all of the renovations at the same time. The female Tenant stated that they were willing to remain in the rental unit while these upgrades are being completed. The male Tenant stated that they are also willing to help with the painting.

The Landlord stated that she also wishes to end the tenancy for a variety of reasons that are not related to repairing or renovating the rental unit. The parties were advised that issues to be discussed at this hearing must be limited to the Landlord's application to end the tenancy pursuant to the Two Month Notice to End Tenancy that was served

on April 03, 2014. The Landlord was not, therefore, permitted to testify regarding issues that do not directly relate to that Two Month Notice to End Tenancy.

### Analysis

On the basis of the Landlord's testimony, I find that the Two Month Notice to End Tenancy that was served to the Tenant on March 31, 2014, was served in error. As the Landlord or a close family member does not intend to occupy the rental unit, I grant the Tenants' application to set aside this Notice to End Tenancy.

On the basis of the undisputed evidence, I find that a second Two Month Notice to End Tenancy was served on the Tenant on April 03, 2014, in which the Landlord declared the tenancy was ending because she 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.

Section 49(6)(b) of the *Act* authorizes a landlord to end a tenancy if the landlord has all the necessary permits and 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. I find that the Landlord is attempting to end the tenancy in accordance with this section.

On the basis of the undisputed evidence, I accept that the Landlord intends to make a variety of repairs/renovations to the rental unit. I find that the Landlord has submitted insufficient evidence to show that the rental unit must be vacant to make the repairs. Many homeowners complete the types of repairs being considered by the Landlord without vacating their homes: they simply move furniture etc. to accommodate the repairs. As the Tenants have clearly indicated their willingness to live in the rental unit while the rental unit is being repaired, I can find no reason to conclude that the rental unit must be vacant for the repairs to be completed.

In reaching this conclusion I have placed no weight on the Landlord's speculation that the mould in the rental unit may pose a health hazard once the renovations are started, as no evidence has been submitted to support that concern. Even if a hazardous material is located during the renovation of the bathroom, the Tenants have indicated they have a place to stay for a few days while any hazardous substance is being removed.

In the event that the Tenants do have to vacate the rental unit for a few days to accommodate the removal of mould in the bathroom, I find that the Landlord would still not have grounds to end this tenancy. The need for vacant possession of the unit does not include the need to vacate the unit for a short period of time. In my view, a landlord can end a tenancy in accordance with section 49(6)(b) of the *Act* only when the entire rental unit needs to be vacant for a long period of time, such as when there are

significant renovations being made to the unit that do not include cosmetic upgrades, such as painting and installing new carpets.

In reaching this conclusion I have considered the Landlord's testimony that she would like to complete all of the repairs/renovations at one time. While I accept it may be easier for a landlord to complete the repairs/renovations she is contemplating when the unit is vacant, I cannot conclude that it is necessary. I do not find it unreasonable for the Landlord to accept minor delays that may occur while the Tenants are moving personal property to accommodate painting and new flooring.

I find that the Tenants' Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

### Conclusion

As the Landlord has failed to establish that she has grounds to end this tenancy in accordance with section 49(6)(b) of the *Act*, I grant the Tenants' application to set aside the Two Month Notice to End Tenancy. The Two Month Notice to End Tenancy, dated March 31, 2014, has no force or effect and this tenancy will continue until it is ended in accordance with the *Act*.

In compensation for the \$50.00 the Tenant paid to file this Application for Dispute Resolution, I authorize the Tenant to retain \$50.00 from one rent payment.

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 04, 2014

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Residential Tenancy Branch

