



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 5470 INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order canceling a Notice to End Tenancy given for a Landlord's use of rental property.

The Landlord, T.C., as well as the building manager, J.S. appeared on behalf of the Landlord. They also called S.L., an electrician and W.N., a plumber. The Tenant appeared on his own behalf, although he was briefly assisted by A.B., a legal advocate. Mr. A.B. requested to be excused at the commencement of the hearing.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Notice to End Tenancy given for the Landlord's use of rental property be cancelled?

### Background and Evidence

T.C. testified as to the details of the tenancy as follows. The tenancy began on March 1, 2000. The rental unit is a 1 bedroom unit in a 49 unit apartment building built in 1965. The current owner purchased the apartment building in 2007. Since 2007, 28 units

have been renovated. According to T.C., each of the previously renovated units were renovated after tenants had given notice to move.

T.C., testified that he has worked with the Landlord for three months. He confirmed he did not have direct knowledge of the renovations and was instead, relying on the affidavit of the contractor as well as information he had been provided by J.S. He testified that the intention of the Landlord was to extensively renovate the rental unit in question, as well as a rental unit on the 6<sup>th</sup> floor at the same time. He further testified that the rental unit and the 6th floor unit are the first units to be renovated which required a 2 Month Notice pursuant to section 49 of the Act.

The Tenant submitted that the Notice was not given in Good Faith and that the true intention of the Landlord was to evict long term tenants, make cosmetic changes, and then be in a position to rent the units at a \$300.00-400.00 monthly rent increase. The Tenant testified that he spoke to the tenant in the 6<sup>th</sup> floor unit, also a long term tenant, and she stated that she did not want to move but felt she was too old to dispute the notice.

The Tenant testified that he has observed the 28 other renovations and that the renovations are not as extensive as claimed by the Landlord, nor did they require vacant possession for two to three months. He testified that from his observations the units are renovated in less than a month and are then rented out at a higher price by the first of the next month. He testified that he walked through a recent renovation with the maintenance worker at the apartment building and while he agreed the renovations were appealing, they were not extensive. He confirmed that the photos submitted in evidence by the Landlord, and which were introduced to show the proposed renovations to his unit, depict the same changes he observed in the recent renovation.

The Tenant submitted that he would be prepared to remain in the rental unit during the renovations, or leave for the period of time that the renovations occurred.

T.C. testified that the renovations involve "gutting" the suite, starting over and reconfiguring the suite. He testified that all the plumbing and electrical was to be removed and replaced. T.C. was not able to provide evidence with respect to whether the necessary electrical or plumbing permits had been obtained.

The building manager, J.S., provided affirmed testimony on behalf of the Landlord. She testified that she has been the building manager for 8 years and manages other buildings as well as the subject apartment building. She confirmed that 28 of the 49

units had already been renovated. She could not recall when the last renovation was completed.

She confirmed that the renovations to the subject rental unit as well as the unit on the 6<sup>th</sup> floor were to begin as soon as the contractor returned from China which she believed was the week after the date of the hearing. She confirmed the extensive nature of the proposed renovations and testified that the rental unit would be “gutted” with all the plumbing and electrical replaced.

J.S. further testified that in order to minimally disrupt the other tenants, the workers are not permitted to work past 4:00 p.m., nor are they permitted to work on weekends or holidays. Finally, J.S. testified that she was not aware whether an electrical permit or a plumbing permit had been taken out.

The electrician, S.L., also provided affirmed testimony. He testified that he has worked as an electrician for more than 10 years. He testified with respect to the proposed renovations to the subject unit and stated that he was to take out and replace the old electrical panel, rewire the kitchen, bathroom and living room. He confirmed that some walls are concrete and therefore would not be rewired. He testified that it would take him approximately one week to do the rough in, and that he would then return with his employees to install the dishwasher, switches, lights etc. which would take a further two to three days. He testified that he has been responsible for the electrical on many of the other renovations and that in his experience, he returned approximately two months after the rough in to complete the electrical. Finally, he testified that an electrical permit had not been obtained and that to the best of his knowledge the building permit also had yet to be obtained.

The Landlord also had available the plumber, W.N., to give evidence. I deemed it not necessary to speak to W.N. as the electrician confirmed that an electrical permit had not been obtained.

The Landlord also submitted the following in evidence:

1. The written Residential Tenancy Agreement indicating the tenancy began March 1, 2000. At that time, rent was payable in the amount of \$730.00 per month payable on the 1<sup>st</sup> of the month.
2. The City of Vancouver building permit issued June 27, 2014 which indicates the purpose of the permit as “alter” and the project value as “\$20,000” and wherein the following condition was noted:

“560 This permit is issued without the benefit of a full plan check, on the condition that the work will meet the approval of the District Building Inspector, DO NOT START WORK UNTIL SUCH APPROVAL IS GRANTED. Contact the Inspections Branch at 604-873-7601 for inspection.”

(reproduced as written)

3. The Affidavit of X.Q.H. sworn August 22, 2014 wherein he deposes that he has renovated numerous suites in the building. The affidavit provides details of the scope of work involved in the renovation of the rental unit and X.Q.H. deposes that the unit will be without water and electricity for an extended period of time making the suite uninhabitable for two to three months.
4. Photos of the rental unit depicting the current condition as well as photos of renovations done to similar units.
5. The 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2014, and which the following reason was given 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.”
6. The Proof of Service of the Notice to End Tenancy wherein it is noted that the Tenant was served at 1:15 p.m. on June 27, 2014 by leaving a copy with an adult who apparently lives with the tenant.

### Analysis

The relevant portion of Section 49(6) of the Act provides as follows:

- (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;

The Tenant applied, pursuant to section 47(4) of the Act for an order setting aside the notice to end the tenancy.

When a Landlord seeks to end a tenancy for purposes of renovation, section 49(6) of the Act sets out three requirements

- (1) the Landlord must have the necessary permits;
- (2) the landlord must be acting in good faith with respect to the intention to renovate; and
- (3) the renovations are to be undertaken “in a manner that require the rental unit to be vacant”

(*Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257.)

T.C. testified that the renovations were extensive and involved completely redoing the plumbing and electrical as well as disconnecting those services for two to three months. Presumably, work of that nature would require electrical and plumbing permits. T.C. confirmed that the electrical permit and the plumbing permit had not been obtained. The electrician, S.L. also testified that the electrical permit had not been obtained and that to the best of his knowledge the building permit had also not been obtained.

Further the Building Permit introduced in evidence by the Landlord indicates that approval by the District Building Inspector is required before any work can begin. There is no evidence such approval has been given.

I find that by failing to obtain the plumbing and electrical permits, and failing to provide proof that the District Building Inspector has provided the required approval, the Landlord has failed to meet the requirements of section 49(6). Accordingly, I find that the Notice is not valid.

The Tenant submitted that the renovations do not require vacant possession. Mr. Justice Williamson, in *Berry and Kloet v. B.C. (R.T.A., Arbitrator)*, found as follows:

[21]...First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use “vacant” to mean “empty”. Thus, the arbitrator must determine whether “as a practical matter” the unit needs to be empty for the renovations to take place. In some cases the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit

be empty. The burden is on the Landlord to establish that vacant possession is required...

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based on the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able [to] carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6).

I find that the extent of the plumbing and electrical work involved in the renovation, and the impact of that work on possible occupation, or duration of vacancy, was not clear based on the evidence filed. Accordingly, find the Landlord has not met the test in section 49(6) of the Act and has not satisfied me that vacant possession is required.

#### Conclusion

The Landlord has failed to obtain the necessary electrical and plumbing permits and has failed to establish that vacant possession is required to complete the renovations. Therefore I order that the Notice is set aside.

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: September 17, 2014

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Residential Tenancy Branch

