



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL

### Introduction

This hearing was convened to address a claim by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that on November 25, the landlord served on the tenant a 2 month notice to end tenancy for landlord's use (the "Notice"). The Notice alleges that the landlord intends to repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that the owner of the property owns several multi-dwelling homes in the area and is renovating each in the same manner. He stated that in order to treat the building for carpenter ants, a hole needs to be cut near the window frames to place the treatment inside the walls. He further testified that the landlord intends in the kitchen to move cabinets, install granite countertops and new flooring, in the bathroom to install a new bathtub and walls and new flooring and install hardwood or carpet in the remainder of the home. He testified that no permits are required and estimated that it would take 3 months to complete the work.

The tenant alleged that the landlord is acting in bad faith, having evicted each of the tenants in 3 separate properties over the past year in order to renovate and raise rents by up to 30%. He testified that in the residential property next door, the landlord had issued a 2 month notice alleging that a family member was moving into the unit, but eventually re-rented the unit to a non-family member. The landlord responded by

saying that a family member had intended to move into the unit next door, but had changed his mind.

The tenant's witness testified that he at one time lived in a rental property next door to the rental unit, a property which was also owned by the landlord. He testified that the landlord attempted several times to evict him and was successful in the end because the tenant missed the prescribed time frame in which to file a dispute of the notice to end tenancy. The tenant provided a photograph of his kitchen as well as a photograph of his witness's kitchen, units which are almost identical, taken after renovations had been completed in the witness's former rental unit. The photographs show that a faucet and the flooring was changed in the witness's unit after renovations. The landlord insisted that a new countertop had been installed, although this is not obvious from the photograph. The landlord also insisted that the kitchen cabinets had been changed although the photographs show them to be identical to those in the tenant's kitchen.

The tenant argued that the rental unit should not need to be vacated for the entire 3 month period in which the landlord anticipated performing the work and offered to vacate the property temporarily in order to accommodate the work.

### Analysis

When a tenant disputes a notice to end tenancy, the landlord bears the burden of proving that there are grounds to end the tenancy and for this type of notice, that the rental unit must be vacant to perform the required repairs and that the landlord is acting in good faith. I find it more likely than not that the landlord is not acting in good faith, but has an ulterior motive for ending the tenancy as the landlord has engaged in several varied attempts to end tenancies in this property and neighbouring properties.

The landlord acknowledged at the hearing that he has made no repairs during the course of this tenancy. This shows me that the landlord has not attempted to preserve this tenancy in order to perform the repairs which he claims are desperately needed but has immediately moved to attempting to end the tenancy. I am not satisfied that the tenancy must end to perform the required repairs. The tenant offered to vacate the property for the period in which it was not possible to reside therein during repairs, which I assume would be the time when the flooring was being installed, and should be relatively short in duration.

The tenant drew my attention to *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)* 2007 BCSC 257 in which Mr. Justice Williamson stated:

... where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6) ... if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required.

I find that as the tenant is willing to vacate the unit for the brief period in which vacancy is required, the tenancy should not end.

For these reasons, I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

Should the landlord choose to pursue repairs and renovations, the parties should work cooperatively with contractors to determine the period of time in which the tenant cannot occupy the rental unit. When repairs are complete, the tenancy will continue at the same rental rate. The landlord is free at any time to pursue an additional rent increase through dispute resolution should he feel that the rent falls below market value.

#### Conclusion

The Notice is set aside and the tenancy will continue.

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 30, 2014

---

Residential Tenancy Branch

