



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

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 this tenancy has been in place for approximately 12 years and that the rental unit is in the upper floor of a four-plex. They further agreed that on November 30, the landlords personally served the tenant with a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The Notice states that the unit will be occupied by the landlord's close family member and that the landlord intends to repair the unit in a manner that requires the unit to be vacant.

The landlords testified that they intend for a sister to occupy the unit full time and that their parents will occupy the unit for up to 6 months at a time each year. They further testified that before their family members move in to the unit, they intend to completely renovate the interior, which will include painting the unit, changing the flooring, changing the baseboards and window trim, changing the light fixtures and electrical outlets, replacing the kitchen and bathroom countertops, replacing the bathroom plumbing fixtures, replacing the kitchen sink and possibly replacing the kitchen cupboards. They testified that the unit is approximately 40 years old and has not been updated in that time.

The landlords testified that they want the unit to be vacated to perform the renovations because if the tenant were still in the unit, they estimate that the cost of repairs would increase fourfold because they would not be able to completely remove all of the old flooring, cabinetry, fixtures, etc. before beginning work.

The tenant testified that in his opinion, the upgrades are not necessary and he theorized that the landlords intend to re-rent the unit at a higher rental rate once upgrades are completed. The

tenant indicated that he is willing to vacate the unit during the day to permit work to be performed and will move his belongings in order to accommodate worker's needs.

### Analysis

In order to end the tenancy because a family member is moving into the rental unit, the landlords must prove that it is a *close* family member as defined by section 49 of the Act. The legislation does not recognize a sibling as a close family member and while the landlords expect that their parents will occupy the unit occasionally, I find that occasional occupation by the parents is not sufficient to establish grounds to end the tenancy. I therefore find that the landlords have not established that a close family member will be occupying the unit and I find that the notice to end tenancy is not valid on this ground.

In order to end the tenancy because repairs require the unit to be vacant, the landlords must prove not just that vacancy is preferred or more cost effective, but that it is required in order to complete the renovations. In this case, the landlords have not persuaded me that vacancy is required, but just that it would make the project more cost effective.

In the 2006 BC Supreme Court decision *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, Mr. Justice Slade found that considering cost effectiveness in determining whether a tenancy had to be ended to allow for renovations was an irrelevant consideration.

Although the proposed renovations may be more cost effective to perform when the unit is empty, I find that the landlords have not proven that vacancy is required in order to proceed with renovations and I therefore find that the landlord has not establish grounds to end the tenancy. For this reason, I order that the notice to end tenancy dated November 30, 2014 be set aside and of no force or effect.

### Conclusion

The notice to end tenancy is set aside. As a result, 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: January 12, 2015

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Residential Tenancy Branch

