



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, MNDC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The tenant, her legal counsel, and the landlord attended the hearing, at which time the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

Due to the length of the hearing, the hearing could not be completed. At the time the hearing concluded, the landlord's evidence, the tenant's response, and the landlord's rebuttal had been concluded; the tenant's legal counsel, however, was not able to provide surrebuttal of the landlord's submissions, due to time constraints. The hearing was adjourned, as the tenant's legal counsel requested to be able to provide her final response to the landlord's rebuttal and final argument by written submissions. The legal counsel agreed that her written submissions could be prepared and sent by January 19, 2015, and that she would send the Residential Tenancy Branch ("RTB") and the landlord a copy.

The landlord asked for and received the opportunity to provide a written response to the tenant's legal counsel's submissions, to be sent by January 27, 2015, with a copy to the RTB and the tenant's legal counsel.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter-* At the outset of the hearing, the evidence of both parties was discussed. The landlord submitted that she did not receive the tenant's evidence until shortly before the hearing, although she had reviewed the evidence. The landlord was advised that the tenant's evidence would be admitted for consideration; however, the landlord was provided an opportunity for an adjournment of the hearing. The landlord declined this opportunity and wished to proceed with the hearing. The landlord also confirmed being able to view the contents of the tenant's digital evidence and that evidence was also admitted.

*Preliminary matter#2-* I have determined that the portion of the tenant's application dealing with a request for monetary compensation is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's application and dismissed the tenant's request for compensation, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to support her Notice to end this tenancy?

Background and Evidence

This tenancy began on March 1, 2009 and current monthly rent is \$1861.11. The landlord was not the original landlord for this rental unit, having purchased the unit in January 2014.

These parties have been in at least three dispute resolution hearings in this past year.

*Dispute resolution hearing #1-*

On March 13, 2014, there was a hearing on the parties' cross applications, with the landlord applying for an order of possession for the rental unit based upon two 2 Month Notices to End Tenancy for Landlord's Use of the Property and the tenants applying for cancellation of those Notices.

In the Decision of March 14, 2014, of another Arbitrator, the landlord was allowed to withdraw her two 2 Month Notices, the tenant's application became moot, and the tenant was granted a monetary order for \$50 for recovery of the filing fee.

*Dispute resolution hearing #2-*

On May 28, 2014, another hearing on the parties' cross applications took place, with the landlord applying for an order of possession for the rental unit based upon another 2 Month Notice to End Tenancy for Landlord's Use of the Property and the tenant seeking cancellation of that 2 Month Notice and monetary compensation of \$1000. The 2 Month Notice stated that the landlord had all 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.

In the Decision of May 28, 2014, another Arbitrator cited that the landlord intended a full renovation of the rental unit, such as installing bathroom tile and shower insert, new kitchen cabinets, and hardwood floors, and to paint the rental unit. The other Arbitrator also cited that the landlord was concerned about water ingress, and mold and structural wear due to the rental unit previously being a leaky condo.

In the tenant's response, the other Arbitrator cited that the tenant submitted that rental unit had undergone a complete renovation in 2009 due to it being a formerly leaking condo, but that it was now new and clean.

In the Decision of May 28, 2014, the other Arbitrator found that the scope of the renovations did not require the rental unit to be vacant, as the work was more cosmetic in nature and very little change in structure. As a result, the other Arbitrator cancelled the landlord's 2 Month Notice of March 25, 2014.

*Review consideration of the May 28, 2014 Decision-*

On June 13, 2014, the landlord filed an application for review consideration of the May 28, 2014, Decision, citing that she had new and relevant evidence that was not available at the time of the original hearing.

In a Decision of June 20, 2014, the reviewing Arbitrator cited that the landlord submitted in her review application that the extent of the work was 4-6 months and that her evidence for the review application showing contractors' quotes show that the scope of the work was more than cosmetic in nature.

In the Decision of June 13, 2014, on the landlord's application for review consideration, the reviewing Arbitrator dismissed the landlord's application, stating that the landlord's evidence was available at the time of the original hearing and therefore dismissed the landlord's application.

*Dispute resolution hearing #3-*

On October 27, 2014, yet another hearing occurred between the parties, as the tenant filed an application for dispute resolution seeking cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, authority to change the locks to the rental unit, and for an order preventing the landlord from terminating the tenant's parking space.

In the resulting Decision of November 6, 2014, another Arbitrator cited that the 1 Month Notice alleged that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The underlying basis of the 1 Month Notice, as cited in the Decision of November 6, 2014, was the landlord's contention that the tenant refused access to rental unit and the tenant's contention that the landlord's request for access was not reasonable as the landlord was attempting to start a long 4-6 month renovation project.

In the Decision of November 6, 2014, the other Arbitrator found that the landlord submitted insufficient evidence to support the 1 Month Notice and cancelled the Notice. The other Arbitrator also dismissed the tenant's request for an order allowing the tenant to change the locks and dismissed the tenant's claim to have the parking space reinstated.

In the present case and pursuant to the Rules, the landlord proceeded first in the hearing in order to support her Notice. The landlord submitted that the Notice was issued to the tenant on November 25, 2014, by attaching it to the tenant's door, listing an effective end of tenancy of January 31, 2015.

The reason for ending the tenancy, as indicated on the Notice, is that the landlord has all the 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.

In support of her Notice, the landlord submitted that she intended to perform major renovations requiring the rental unit to be vacant, and that the work would take 4-6 months. In explanation, the landlord submitted that she would have to work around contractors' schedules, as they would only be able to come in on a piecemeal basis when they did not otherwise have larger projects on the go. The landlord submitted she could not afford the contractors otherwise.

The landlord submitted that she was still concerned with the possibility of mold and water ingress, as raised in the hearing on May 28, 2014. The landlord submitted further copies of a new permit, which supported her contention that the proposed renovations were beyond cosmetic, required vacancy of the rental unit and were in good faith. In support of this contention, the landlord submitted further the estimate of costs.

The landlord submitted further that after the renovation, her plan was to put the rental unit back on market in order to receive fair market value and to receive a financial gain. In explanation, the landlord submitted that after the cost of renovation, she could charge more monthly rent.

*Response of the tenant-*

The tenant's legal counsel submitted that the work mentioned by the landlord was in essence the same work and time frame mentioned by the landlord in support of her third 2 Month Notice to End Tenancy, as addressed in the Decision of May 28, 2014. The tenant's legal counsel also submitted that the matters in this Notice were previously decided in that Decision of May 28, 2014.

The tenant's legal counsel submitted that 4-6 months was an extreme estimate of time for such work as described and that the landlord has not presented evidence of mold or water leaks.

The tenant's legal counsel submitted that a large part of the landlord's quotes were costs for high end furnishings and therefore not relating to the need for vacancy. The legal counsel also submitted that the bad faith shown by the landlord came from the repeated notices to end the tenancy issued by the landlord to receive a greater financial gain.

The tenant's legal counsel also submitted that the police report shows that the tenant did not prevent the landlord from entering the rental unit and confirmed that the landlord's actions caused the necessity of calling the police.

*Tenant's legal counsel's written submissions-*

Within the allowed deadline, the tenant's legal counsel submitted as follows:

- That the landlord was required to have in place all the permits prior to issuing the Notice, not relying on tradespersons to acquire permits after the fact.
- That the previous dispute resolution Decisions of the RTB show that the work as claimed by the landlord in the present case was similar or identical to the work.
- That the tenant's child's physical condition did not prevent the proposed work from being performed.
- That there is no evidence from the landlord as to how long the whole renovation would take to complete and that the landlord has provided inconsistent information in this regard at the various hearings. Further that the kitchen wall, according to the landlord's own submission, was not a structural job and could be done in a day.
- That the evidence shows the landlord did not attend the rental unit or that the tenant failed to allow entry.

In final summary, the tenant's legal counsel submitted that the landlord failed to meet the criteria set out under the Act for ending this tenancy pursuant to the 2 Month Notice, that the landlord has not been reasonable in working out a work schedule with the tenants, that the tenants have been reasonable in their approach with the landlord, even if they believe the proposed work is not necessary, that the landlord has not been accommodating in her approach with the tenants, and that the landlord wants the rental unit for her own use.

*Landlord's written submissions-*

Within the allowed time frame, the landlord provided written submissions. Upon a review of that submission, the landlord submitted mostly a re-argument of her testimony and original submissions and not a rebuttal to the tenant's legal counsel's submissions.

In her written submission, the landlord wrote that she acted in good faith, confirming in her first paragraph that she wanted to update the rental unit to bring it in line with today's value. The landlord submitted further that she had the necessary permits, that the renovations are major and cannot be carried out in an occupied unit, giving estimates of time for the work.

The landlord referred to another reason as to why the tenancy should end, for the reason that the landlord-tenant relationship is beyond repair. The landlord pointed out to differences in her situation as compared to the legal authority and case law as provided by the tenant's legal counsel.

Analysis

Once the tenant made an application to dispute the 2 Month Notice, the landlord became responsible to prove the notice to end tenancy is valid.

The Notice was issued pursuant to section 49(6) of the Act which provides “a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord had all 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.”

In addressing whether or not the landlord established that she had all the necessary permits and approvals required by law, I find that she did not. The landlord confirmed that she did not have the electrical or plumbing permits, which were referred to in her permit.

In considering whether or not the landlord established that the rental unit was required to be vacant, the British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

“[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. That was the case in *Allman*. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[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 upon 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 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). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

I note that out of an abundance of caution, I have not considered whether or not the matter of the permits and scope of the work has been previously decided by other Arbitrators, as there were some slight differences or additions in the description of work, even though the landlord gave the same time frame for the project.

As to whether or not the landlord has established that there is no possible way to carry out the renovations unless the rental unit is vacant, I considered the landlord's evidence, which shows that the work proposed in her permit for the present 2 Month Notice was not significantly different from the permits she acquired in support of her first 2 Month Notice, which was the subject of the May 28, 2014, hearing. While it is true that the estimated costs were greater in this instance, the estimates show in excess of \$23,000 for high end appliances and fixtures and the flooring estimate of nearly \$14,000 was submitted for the May 28, 2014, as shown by the landlord's evidence. The permit mentioned the removal of non-load bearing walls and providing improvements, which I find shows that the renovations do not require the rental unit to be vacant. I cannot disagree with the Arbitrator in the May 28, 2014, that the work appears to be more cosmetic in nature.

I also find the landlord failed to submit sufficient evidence that there were mold or water ingress issues.

I also find that the landlord submitted an unrealistic time frame for the work to be completed, as the 4-6 months given by the landlord was meant to reduce the landlord's costs to be able to have a contractor work when they have a little spare time rather than to provide an accurate picture of the scope and nature of the work.

In this case, while it may be more convenient and less expensive to have the rental unit vacant during renovations, I find the landlord failed to submit sufficient evidence to prove that there is no possible way to carry out the renovations unless the unit is vacant and that to achieve vacancy the tenancy must end.

As to the tenant's contention that the landlord did not issue the Notice in good faith, or in other words, the landlord had a reason other than the one stated on the notice to end tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose.

In this case, I find that the evidence shows that the landlord did have an ulterior motive for ending the tenancy. In reaching this conclusion, I relied on the landlord's multiple statements that she intended to renovate the rental unit so that she could charge more for the rental unit equal to what she considered fair market value. The landlord knew at the time of purchase that the property was rented and the amount of monthly rent being paid. I find further that the landlord has engaged in a pattern of issuing Notices to the tenants containing similar reasons in an ongoing attempt to evict the tenants, since near the beginning of her ownership, all found to lack merit.

Due to the above, I find the landlord failed to submit sufficient evidence that she had the necessary permits and approvals required by law, that the Notice was issued in good faith, and that the rental unit was required to be vacant during renovations.

As a result, I find the landlord's 2 Month Notice to End Tenancy for Landlord's Use, issued and dated November 25, 2014, for an effective end of tenancy date of January 31, 2015, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

The landlord is informed that the repeated attempts to evict a tenant, without cause, such as the present one issued shortly after receiving an adverse decision on the landlord's 1 Month Notice, which was issued following issuance of another 2 Month Notice, later cancelled, which was preceded by the issuance of two 2 Month Notices, may constitute a loss of the tenant's quiet enjoyment, for which the tenant may seek monetary compensation from the landlord through an application for dispute resolution.

I grant the tenant recovery of her filing fee paid for this application, or \$50.00. The tenant is directed to deduct \$50.00 from her next, or a future month's rental payment, in satisfaction of her monetary award. The tenant should advise the landlord when she is making such deduction.

### Conclusion

The tenant's application is granted, as I have cancelled the landlord's 2 Month Notice, dated and issued on November 25, 2014, and the tenancy continues until it ends in accordance with the *Act*.

The portion of the tenant's application seeking monetary compensation of \$1000.00 is dismissed, with leave to reapply.

The tenant is awarded \$50.00 for recovery of the filing fee paid for this application.

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 30, 2015

