



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 22, 2015 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The two tenants, "TG" and "SA," and their advocate, UK (collectively "tenants") and the landlord attended the hearing and were each given an opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenants TG and SA confirmed that they authorized their advocate, UK, to represent them and make submissions on their behalf, at this hearing.

The landlord testified that he served the tenants with the 2 Month Notice on January 22, 2015, by way of registered mail. The tenants confirmed receipt of the 2 Month Notice on January 27, 2015. In accordance with sections 88 and 90 of the *Act*, I find that that the tenants were duly served with the landlord's 2 Month Notice on January 27, 2015.

The landlord testified that he received the tenants' application for dispute resolution hearing package ("Application") on February 4, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

The tenants confirmed that the landlord's written evidence package was handed to them by the landlord's agent, TD, on February 19, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were duly served with the landlord's written evidence package.

During the hearing, the landlord made an oral request for an order of possession, if the tenants' application was dismissed.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices, and emails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

The tenants testified that this month to month tenancy began approximately 40 years ago. No written tenancy agreement exists for this tenancy, as only an oral agreement was made. Monthly rent in the amount of \$450.00 is payable on the first day each month. A security deposit was not required for this tenancy, so none was paid. The tenants continue to reside in the rental unit. The tenants occupy the upper level of a two-level house, while another tenant occupies the lower level ("lower unit").

The landlord stated that he purchased the house on May 1, 2014 and he agreed to continue the tenants' existing tenancy in the rental unit at the same monthly rent of \$450.00. The landlord indicated that he attempted to have the tenants sign a written tenancy agreement when he purchased the house, but the tenants did not respond to his requests, so no agreement was signed.

The landlord issued the 2 Month Notice, with an effective move-out date of April 1, 2015, for the following reason:

- 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 testified that he requires the tenants' rental unit to be vacant in order to perform repairs and renovations. The landlord stated that he intends to do the repair and renovation work himself, with another person assisting. The landlord indicated that he is a certified plumber and gas fitter so he is able to do the work and he is aware of

the safety and health issues involved. The landlord indicated that there would be a lot of garbage, dust and chemicals in the rental unit, which requires the rental unit to be empty during renovations. The landlord stated that the renovations will likely take about 3 weeks, possibly up to 4 weeks. The landlord maintained that he would likely work about 12 hours per day in order to finish the work and return to his out-of-town home which is far away.

The landlord indicated that he advised the tenants when he purchased the house, that he would be completing renovations to the rental unit. The landlord indicated that he waited as long as possible before issuing the 2 Month Notice, in order to give the tenants more time to vacate. The landlord stated that the house was built in 1926 and has never undergone any renovations. The landlord indicated that there has been a lot of wear and tear on the house. The landlord maintained that he wished to avoid any future problems such as leaks and major repairs, that might arise in the future and become expensive. The landlord stated that, based on his experience in the industry and due to an ongoing leak in the bathroom ceiling, renovations need to be completed. The landlord indicated that he had to perform water leak repairs in the bathroom and kitchen of the rental unit in July 2014. He stated that the bathroom cabinet and kitchen countertop deteriorated faster because of these leaks. The landlord indicated that he performed these repairs while the tenants were still occupying the rental unit, that it cost very little as he completed the repairs himself and it took about 4 to 6 hours in total. The landlord stated that although the lower unit is the same age as the tenants' rental unit, no renovations are required for the lower unit, although it is a possibility in the future. The landlord stated that prior to the new tenant moving into the lower unit, his property manager disposed of garbage, repaired plumbing leaks and painted the unit.

The landlord provided a copy of an email, dated February 16, 2015, sent to the City building inspector, regarding the landlord's intended repairs and renovations for the rental unit. The landlord testified that he intends to replace existing carpet in the two bedrooms and living room with laminate flooring. He also intends to repair and paint the drywall and veneer board in the entire rental unit. The landlord wishes to replace the existing kitchen cabinets with modern cabinets because of wear and tear from 40 years of usage. He also wants to complete minor plumbing by replacing the old sinks and faucets in the bathroom and kitchen with modern versions, due to his concern about leaks and wear and tear.

The landlord stated that no permits or approvals are required by law, for these repairs and renovations. The landlord provided an email, dated February 17, 2015, from a City building inspector stating:

*“...a building permit is not required for the work...work that does require a building permit would be changes that would affect health and safety issues that are prescribed in the building code.”*

The landlord testified that the tenants can return to the rental unit after the renovations are complete, if they sign a written tenancy agreement and agree to pay a higher rent. The landlord stated that he offered the tenants the option to move into the lower unit at a discounted rate between \$950.00 and \$975.00. The landlord indicated that the lower unit is currently renting for \$1,150.00. The landlord repeatedly indicated during the hearing that he was not a “social housing provider” and that he was not required to allow the tenants to continue occupying the rental unit at such a low monthly rental rate of \$450.00. The tenants noted that the vacancy rate in their City is close to zero because of the amount of construction occurring. They indicated that there is currently a “housing boom,” such that there is a concerted effort to increase rent in the City.

The tenants testified that the landlord did not issue the 2 Month Notice in good faith. They stated that the landlord is trying to complete unnecessary repairs and renovations in an attempt to increase their monthly rent. The tenants indicated that no repairs are required in their rental unit and that they have not complained of any required repairs. One of the tenants, TG, indicated that he was formerly employed as a carpenter and that the landlord’s proposed renovations and repairs should not take three weeks to complete. He stated that carpet can be replaced in one hour and that drywall and painting can be done in two days. TG indicated that there is no wear and tear and no replacement required of the kitchen cabinets. He stated that the tenants can remain in the rental unit while the plumbing and drywall work is being completed, as he has done this in the past by placing protective plastic sheeting around the affected area and living on the other side of the sheeting. The tenants indicated that the landlord has not yet purchased any required materials to complete the renovations, which questions his intentions to do so.

The tenant, SA, testified that her aunt is the tenant occupying the lower unit of this house. The landlord was unaware of this fact until this hearing. Both parties agreed that the lower unit has three bedrooms. SA indicated that her aunt may be willing to allow the tenants to stay in one of these extra bedrooms during the renovation period. SA stated that she has not yet asked her aunt but that it should not be a problem, as they are on good terms with each other. The tenants offered to pay their monthly rent of \$450.00 to the landlord, while occupying the lower unit. The landlord stated that there was nothing wrong with the tenants’ proposal but that it is too late to propose this plan, that matters are adversarial now, that the tenants and SA’s aunt seem to have “hatched

a plan” against him, and that three weeks was too long for the tenants to occupy the lower unit.

### Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenants received the 2 Month Notice on January 27, 2015 and filed their Application on February 2, 2015. Therefore, they are within the 15 day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the basis of the 2 Month Notice.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

I find that the landlord had other motives for issuing the 2 Month Notice. I also find that the landlord has not met his burden of proof to show that he issued the 2 Month Notice in good faith. The landlord clearly stated that the tenants could only return to the rental unit after signing a new tenancy agreement for a higher monthly rent. Issuing a 2 Month Notice in order to raise the tenants’ rent, is not a valid reason to issue the notice.

The tenants indicated that no repairs are required in their rental unit and that they did not request any repairs to be completed. Only minor repairs were completed in July

2014 for wear and tear issues. The landlord did not provide any documentary evidence, including reports, assessments or photographs, indicating that repairs are required or that renovations should be undertaken due to structural, wear and tear or other issues in the rental unit. The lower unit of the same house is the same age as this rental unit and no renovations are required. This is likely due to the fact that the tenant in the lower unit is paying a substantially higher amount of rent of \$1,150.00, as compared to these tenants at \$450.00.

I also find that if the tenants are willing to temporarily leave their rental unit for the duration of the renovations, that an end to the tenancy is not required. The landlord indicated that the renovations will likely only take a short time of about 3 to 4 weeks. The tenants indicated that they can likely obtain temporary accommodation at the lower unit of the same house, with SA's aunt, during the renovations.

In the Supreme Court of B.C. case of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the Court held that the fact that renovations might be more easily or economically undertaken if the unit were empty, is not sufficient to demonstrate that the unit must be empty for renovations to take place. Firstly, in order to warrant an end to tenancy, renovations must only be possible if the unit is unfurnished and uninhabited. Secondly, the landlord must establish that the only manner to achieve this vacancy or emptiness is by terminating the tenancy. In the above case, the court held that it was irrational to think that a landlord could terminate a tenancy because a brief period of emptiness was required, which in that case was 3 days. The tenants in that case were also willing to vacate the suite temporarily and remove their belongings if necessary.

Firstly, in this case, the landlord did not demonstrate with documentary evidence, that the rental unit needs to be empty during renovations. The City building inspector even indicated that a building permit was only required for work affecting "health and safety issues," as per the building code. The landlord's renovations only involve replacing old plumbing, cabinets and carpet with newer versions. The landlord has not sufficiently demonstrated that the rental unit must be empty during the proposed renovations. Secondly, an end to this tenancy is not required where the tenants are willing to temporarily vacate the rental unit, in which case they can also remove their belongings. The renovation period of three to four weeks is a brief period of emptiness. Under these circumstances, I find that this rental unit is not required to be vacant during the renovations, a requirement of section 49(6)(b) of the *Act*.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his onus of proof to show that he intends, in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. I dismiss the landlord's application for an order of possession. The landlord's 2 Month Notice, dated January 22, 2015, is hereby cancelled and of no force or effect. This tenancy continues under the terms of the original oral tenancy agreement, at the monthly rental rate of \$450.00, until it is ended in accordance with the *Act*.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

### Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's application for an order of possession is dismissed. The landlord's 2 Month Notice, dated January 22, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants are entitled to recover the \$50.00 filing fee from the landlord. I order the tenants to deduct \$50.00 from a future rent payment at the rental unit, in order to implement this decision.

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: March 12, 2015

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Residential Tenancy Branch

