



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Heatherlea Apartments Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 49;
2. An Order for the Landlord’s compliance – Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

### Preliminary Matter

The Landlord received the Tenant’s evidence package later than allowed. The Landlord stated however that the materials were read and the Landlord did not wish to adjourn the matter for more time to respond to the materials. Given the Landlord’s desire to continue with the hearing and considering that the Landlord is aware of the contents of the evidence, I find that the evidence package may be considered.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to an order for the Landlord's compliance?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started in 1992. Rent of \$1,031.00 is payable monthly on the first day of each month. On February 28, 2015 the Landlord served the Tenant with a two month notice to end tenancy on an old form with an effective date of May 31, 2015. The Tenant disputed this notice informing the Landlord that the notice was not the correct notice. On March 22, 2015 the Landlord served the Tenant with a replacement two month notice to end tenancy for landlord's use of property (the "Notice") on the correct form retaining the same effective date. The reason set out 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. The Landlord agrees that the Tenant's intention to dispute the notice to end tenancy remains valid in relation to the replacement notice.

The Landlord states that only one renovation item, the replacement of the electrical panel, requires a permit and that such permit has been obtained. The Landlord provided a letter from its contractor setting out the renovations to be done and the permit obtained.

The Landlord states that all the renovations will proceed subject to the availability of the various contractors and that although it is hoped to be completed within three months, other units have taken as long as six months to complete. The Landlord states that the unit needs to be empty in order to complete all of the jobs except the electrical box replacement and the replacement of the windows. The Landlord also states that he is not sure that it would be possible to occupy the unit during the renovations.

The Landlord states that insulation will be placed in the walls of the unit and that this requires the tearing out of the plaster on one or more walls in the dining room, living room, bathroom and bedroom. Ideally the windows would be done at the same time. The Landlord states that the flooring will be replaced throughout the unit except the kitchen flooring which will be replaced with linoleum. The Landlord states that this will take a number of days to complete and that once started the flooring will be done all at once. The Landlord states that the kitchen cabinets and appliances will be removed at the same time and would not allow use of the kitchen for a time.

The Witness for the Tenant states that he has been in the property management business since 1988 and has been involved in many renovations on apartments over the years. The Witness questions the Landlord's stated plans for installing insulation and states that an option exists for the unit to be insulated without any ingress into the interior of the unit and without removing any drywall. The Witness describes the injection of a type of insulation from the exterior. The Witness states that unless the existing flooring and subfloor have structural defects that require removal and replacement, the Landlord could simply lay laminate flooring over the existing flooring, reducing time and costs. The Witness states that even if the present flooring needs removal the flooring work can be accomplished one room or area at a time allowing furniture to be moved from room to room as work is done. The Witness states that the unit does not need to be empty in order to complete the work in the kitchen and that there would only be inconvenience for a period of approximately 4 days that the Witness estimates would be required for the job. The Witness states that in undertaking the same renovations at other units, a total unit can be renovated within a week. The Witness states that this is because they have a dedicated contractor and crew available.

The Landlord states that in order to be cost effective the unit needs to be empty as they cannot complete the work all at once given the expected periods of contractor unavailability and as the unit would be left in-between periods with holes and exposed flooring. The Landlord states that if they did the flooring room by room it would probably be costly. The Landlord states that the plans are to have all the flooring done at once as generally when one job is started it is worked to completion. The Landlord states that each particular renovation requires different contractors. The Landlord states that the method of installation and type of insulation are chosen based on work done in previous renovations and are based on economic considerations and an internal rate of return. The Landlord points to the Tenant's submission that work on the other units was disrupting her due quiet enjoyment as she did shift work. The Landlord states that this shows that the Tenant would not be able to tolerate living in the unit and it would be difficult to work around the Tenant's shift schedule as contractors only work during daytime business hours.

The Tenant states that the Landlord's reasons for requiring an empty unit are more about ending the tenancy than doing renovations. In the Tenant's written submission the Tenant indicates that the rent amount quoted to her for a renovated unit was \$2,350.00 per month. The

Tenant states that she would be able to live in the unit through construction as she has done several times in the past and because she is committed to remaining in the unit for the long term. The Tenant states that she has lived through window changes, painting and the gutting of the kitchen in the past with this unit.

The Landlord asks for an order of possession should the Notice be found valid.

### Analysis

Section 52 of the Act provides that in order to be effective, a landlord's notice to end a tenancy must, inter alia, be in the approved form. Given the undisputed evidence that the first notice to end tenancy was not on the correct form, I find that the first notice has no effect. Accepting the Landlord's undisputed evidence of replacing this form by a second notice on a correct form, I find that the second notice is effective and as a replacement is validly under consideration for this application. Given the evidence of the correct form I find that the Landlord has complied with the Act and I therefore dismiss the Tenant's claim for an order of compliance.

Section 49 of the Act provides that a landlord may end a tenancy of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Where a landlord's notice to end tenancy comes under dispute, the landlord has the burden to prove on a balance of probabilities that the tenancy should end for the reason indicated on the notice in order for the notice to be valid.

It appears to me, given the Landlord's uncertainty about whether the unit could be lived in during the renovations, that at a minimum the Landlord did not give any thought to this possibility before deciding to end the tenancy. The Landlord's evidence of planning to this stage is supported by the contractor's letter but the contractor does not set out any construction requirements or issues that require a vacant unit. The Landlord provided no evidence of any structural issues with the renovations being done and it appears that beyond the items that could be done with the Tenant living in the unit, the renovations are primarily cosmetic. The undisputed evidence of the size of a rent increase that would occur after a renovation of a unit also supports the Tenant's position that the Landlord has a different intention for ending the current tenancy than simply the renovations.

Although the Landlord uses the Tenant's tolerance level as another reason that the unit must be vacant, I accept the Tenant's evidence of previous disruptions having been tolerable. I find the Witness evidence to be compelling and very credible on how the renovations could be carried out without an empty unit. For these reasons, I find on a balance of probabilities that the Landlord has not shown a good faith intention and has provided insufficient evidence that the unit is required to be vacant for the planned renovations. As such I find the Notice to be invalid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the \$50.00 filing fee. The Tenant may deduct this amount from future rent payable.

#### Conclusion

The Notice is cancelled and of no effect.

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: April 22, 2015

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Residential Tenancy Branch

