



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNC

### Introduction and Preliminary Matters

This hearing convened as a result of a Tenant's Application for Dispute Resolution, wherein he sought to set aside a Notice to End Tenancy for Cause and a 2 Month Notice to End Tenancy for Landlord's Use.

At the outset of the hearing, the Landlord confirmed that he did not issue a 1 Month Notice to End Tenancy for Cause to the Tenant. A review of the file confirmed that no such notice was filed in evidence. Accordingly, I dismiss the Tenant's application for an Order cancelling a 1 Month Notice to End Tenancy for Cause.

The Landlord further confirmed that he issued a 2 Month Notice to End Tenancy for Landlord's Use on February 9, 2015 with an effective date of April 9, 2015. The Landlord testified that he served the 2 Month Notice on the Tenant on February 9, 2015 and that this service was witnessed by K.B. He provided K.B.'s phone number during the hearing and although I made attempts to involve K.B. in the hearing for the purposes of giving evidence of the service of the 2 Month Notice, K.B. could not be reached.

The Tenant testified that he was served on February 11, 2015 and that contrary to the Landlord's claims, no one else was present when he was served. The Tenant confirmed that he was served on a Wednesday. Notably, he also indicated on his Application that the date the Notice to End Tenancy was received was February 11, 2015.

I accept the Tenant's evidence that he was served on February 11, 2015 and that he did so within the time required in section 47 of the Act.

### Issue to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on February 9, 2015 be cancelled?

### Background and Evidence

The Landlord testified that the rental unit is located in a 14 room motel. The Landlord confirmed that there are six other occupants in the motel and that all of which have received a 2 Month Notice to End Tenancy as the new owners wish to renovate the motel. The reasons issued on the 2 Month Notice were as follows:

“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 failed to submit any evidence which would support the Notice.

When I asked the Landlord if he had the required permits for the renovation work, he testified that he did not believe that he required permits as none of the dimensions were being changed. He stated that he confirmed with this with the Regional District in which the rental unit was located.

When I asked if the Landlord had any building plans or drawings which would provide details as to the proposed work, the Landlord responded that he was simply “recounting what the owners wanted”.

The Landlord testified that the entire rental building/motel needs to be vacant for 3-4 months during the renovation. He was unable to provide any further details of the work involved only to say that the new owners wanted to do the work “all together”.

### Analysis

Rule 11.1 of the *Residential Tenancy Branch Rule of Procedure* provide that where a tenant applies to set aside a Notice to End Tenancy the respondent landlord will present his or her case first as the landlord bears the onus of proving that the Notice should be upheld.

The Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use. The relevant portion of Section 49(6) of the Act provides as follows:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The Tenant applied, pursuant to section 47(4) of the Act for an order setting aside the notice to end the tenancy.

When a Landlord seeks to end a tenancy for purposes of renovation, section 49(6) of the Act sets out three requirements

- (1) the Landlord must have the necessary permits;
- (2) the landlord must be acting in good faith with respect to the intention to renovate; and
- (3) the renovations are to be undertaken “in a manner that require the rental unit to be vacant”

*(Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257.)*

The Landlord confirmed that permits had not been obtained as he believed they were not required. Although he claimed to have discussed this with the Regional District, he did not provide any evidence which would support his claim that such permits were not required.

The Landlord also failed to provide any evidence which would support a finding that the renovations require vacant possession. Mr. Justice Williamson, in *Berry and Kloet v. B.C. (R.T.A., Arbitrator)*, found as follows:

[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. The burden is on the Landlord to establish that vacant possession is required...

[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 on 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 [to] 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).

I find that the extent of the work involved in the renovation, and the impact of that work on possible occupation, or duration of vacancy, was not clear based on the evidence filed. Accordingly, I find the Landlord has not met the test in section 49(6) of the Act and has not satisfied me that vacant possession is required.

### Conclusion

The Landlord has failed to establish that vacant possession is required to complete the renovations. Therefore I order that the Notice is set aside.

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 08, 2015

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Residential Tenancy Branch

