



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes CNL, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the hearing and also represented the other tenant. An agent for the landlord company also attended. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for improvements made to the rental unit by the tenants?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on September 1, 2003 and reverted to a month-to-month tenancy after the expiration of the fixed term on February 28, 2004. The tenants still reside in the rental unit. Rent is payable on the 1<sup>st</sup>

day of each month, and there are no rental arrears, however the landlord's agent is not certain of the monthly amount currently payable. The landlord collected a security deposit from the tenants in the amount of \$422.50 in July, 2003 as well as a pet damage deposit in the amount of \$200.00 which was collected on February 5, 2013. Both deposits are still held in trust by the landlord.

The landlord's agent further testified that a hearing was held earlier this year wherein the tenants had applied for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord. The notice was set aside because the landlord did not have permits in place prior to issuing it.

The rental unit is one of 185 units within the complex, and the landlord has been completing renovations throughout the complex in sections. Tenants were provided with a notice stating that compensation would be provided. All tenants have vacated their respective units in accordance with notices issued, however this unit remains tenanted.

The landlord obtained the permits required on April 23, 2015, copies of which have been provided. The landlord then issued another 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has also been provided. The notice is dated April 24, 2015 and contains an expected date of vacancy of June 30, 2015. The reason for issuing the notice is:

- 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 notice was posted to the door of the rental unit on April 24, 2015 and a Proof of Service document has also been provided showing that service was witnessed by another person.

The landlord's agent further testified that the landlord needs to cut holes in walls and ceilings to replace plumbing pipes and is concerned about asbestos. On May 19, 2015 the landlord gave the tenants a notice to enter the rental unit and a plumbing contractor put in some temporary water lines to accommodate the tenants on May 22, 2015 at significant cost to the landlord, simply because they still reside in the rental unit, even though the notice to end the tenancy had already been issued. A test was conducted by the contractor who found traces of asbestos. Contractors have had to work around the tenants, which has delayed the work. All tenants will be permitted to move back into their respective units once work has been completed, under new tenancy agreements.

With respect to the tenant's monetary claim, the landlord's agent testified that the tenants had asked for permission to replace the laminate flooring in the rental unit at the tenant's expense, which was agreed, and copies of written material to that effect have been provided. However, the tenants' claim includes other improvements which were not agreed to by the landlord, and would not have been due to the landlord's plan to renovate.

**The tenant** testified that rent is \$1,015.00 per month, and agrees with the testimony of the landlord's agent with respect to the deposits collected by the landlord.

The tenant further testified that they have resided in the rental unit for over 12 years, and decided to renovate, asking the landlord to change the laminate flooring at their own expense. The landlord agreed, and the tenants completed other improvements without the landlord's permission, such as new mirrored sliding doors, a new bathroom vanity cabinet and a new bathroom medicine cabinet. The improvements were shown to the landlord's agent. A Monetary Order Worksheet has been provided showing that the tenants claim \$393.66 for the cost of the laminate flooring and \$2,100.00 for its installation because had they known that the tenancy would not be longer, they would not have changed the flooring. Also claimed are \$551.40 for the sliding mirrored doors, \$277.76 for the bathroom vanity cabinet and \$260.66 for the bathroom medicine cabinet. The tenants claim \$3,583.48 for the cost of those improvements, although no discussions between the parties took place about compensating the tenants for those improvements. The improvements would not have been made if the tenants were aware that the landlord intended to issue the notice to end the tenancy.

The tenant also testified that they have been cooperating with the landlord and contractors, and agree to move out for the necessary period of time to complete the renovations, but want to move back in under the same tenancy agreement. The landlord's agent had told the tenants that the renovations would take several weeks. The tenants do not dispute that the rental unit has to be vacant, but are willing to accommodate the landlord and contractors. The tenants had planned to stay in the rental unit long term.

### Analysis

Firstly, with respect to the tenants' monetary claim, I have reviewed the tenancy agreement and note that it also speaks to emergency repairs and defines emergency repairs, which I find is consistent with the *Residential Tenancy Act*. A tenant may make repairs that are urgent and necessary for the health or safety of persons or preservation of property, which are limited to major leaks, damaged or blocked water or sewer pipes, heating or defective locks, and may request compensation for such emergency repairs.

In this case, the tenants have applied for monetary compensation for improvements which are not emergency repairs as defined by the tenancy agreement or the *Act*. The landlord's agent also testified that no permission was sought or given to do the improvements other than the laminate flooring, and that the landlord would not have given permission knowing that the building had to be renovated. The tenant does not deny that. The parties agree that the tenants received permission from the landlord to replace the laminate flooring in December, 2013 at the tenants' expense. Therefore, the tenants' application for monetary compensation for improvements cannot succeed.

With respect to the tenants' application to cancel the notice, I have reviewed the notice and find that it is in the approved form and it contains information required by the *Act*. I have also reviewed the permits, and I am satisfied that the landlord has established that all permits are in place. A landlord is entitled to issue such a notice, and I find no reason to cancel it. The tenants' application to cancel the notice is dismissed.

### Conclusion

For the reasons set out above, the tenants' application is hereby dismissed without leave to reapply.

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: June 16, 2015

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Residential Tenancy Branch

