



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Privio Investments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for landlord use.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that was given stating 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.

### Background and Evidence

The landlord testified that:

- The Notice to End Tenancy is been given because repairs need to be done in the bathroom of the rental unit that also requires asbestos abatement that requires the unit to be vacant.

- The landlord testified that the drywall in the bathroom has to be completely removed, down to the studs, and asbestos has been found in the drywall of this rental property. Due to the health risks caused by asbestos, this work cannot be done while the tenants are in the rental unit.
- Further, since the whole bathroom has to be gutted, the tenants would have no bathroom facilities while this work is being completed, as it is the only bathroom in the rental unit.
- A permit is required to do the asbestos abatement, however the city will not issue that permit until one week before the work is to be done, and therefore at this time they are unable to obtain the required permit.

The tenants have argued that:

- The landlords have provided no evidence whatsoever, and therefore there is no proof that asbestos abatement is required.
- There is no proof to show that the landlords do not need permits in place prior to giving the Notice to End Tenancy.
- Further the landlord's has given no information on how long this renovation to the bathroom will take, and therefore they have no way of knowing whether it's reasonable for them to vacate the rental unit rather than just temporarily vacate while the work is being done.
- They are therefore asking that this Notice to End Tenancy be canceled.

### Analysis

The reason given to end the tenancy on the Notice is based upon section 49(6)(b) of the Residential Tenancy Act which provides:

(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;

[my emphasis]

The test, that the repair or renovation requires the rental unit to be vacant, has been an issue before The Supreme Court of British Columbia in *Berry v. British Columbia*, 2007 BCSC 257. The court found that the requirement that a rental unit be vacant has two dimensions that must be satisfied in order to determine that the tenancy must end:

1. As a practical matter, does the unit need to be empty for the renovations to take place? The fact that renovations might be more easily or economically undertaken if the unit was empty is not sufficient. To warrant an end to the tenancy, renovations must only be possible if the unit is unfurnished and uninhabited.
2. The landlord must establish that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the tenancy.

The court also noted that even if the unit needs to be vacant for only a short time, it is irrational to think that a landlord could terminate the tenancy.

In this case, although the landlord claims that vacant possession is required, the landlord has provided no evidence in support of that claim. The landlord claims that the asbestos abatement cannot be done with the people living in the rental unit, however the landlord has provided no information from an independent contractor to support that claim. Therefore it's my finding that the landlord has not satisfied the first part of the above test.

Secondly, since the landlord has not given an estimate of the length of time it would take to do the renovation, the landlord has not shown that the only manner in which to achieve the necessary vacancy or emptiness is by terminating the tenancy, especially since the tenants have testified that they are willing to temporarily vacate the rental unit for a period of time while the renovation is done. Therefore it is also my finding that the landlord has not met the second part of the above test.

I therefore order that the Section 49, 2 month Notice to End Tenancy, issued on May 27, 2015 is canceled and this tenancy will continue.

I further order that the respondent/landlord's bear the \$50.00 cost of the filing fee paid by the applicants.

Conclusion

The Notice to End Tenancy has been canceled and I have issued a monetary order in the amount of \$50.00 for recovery of the filing fee.

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: July 20, 2015

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Residential Tenancy Branch

