



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNL OLC FF

### Introduction

This hearing dealt with the tenant's 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 ("the 2 Month Notice") pursuant to section 49;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other party's materials for this hearing. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

### Background and Evidence

This tenancy began December 2003 as a month to month tenancy. The current rental amount of \$1074.00 is payable on the first of each month. The landlord continues to hold a \$500.00 security deposit paid by the tenant at the start of this tenancy. The tenant continues to reside in the rental unit. The tenant received a 2 Month Notice to End Tenancy for Landlords Use with the reason provided that the landlords intend to repair and renovate extensively. The tenant initially disputed that the landlord issued this 2 Month Notice to End Tenancy in good faith.

The tenant testified that her rental unit had been painted in 2009 and that the downstairs flooring had been upgraded in 2010. She testified that, in making her application for dispute resolution, she suspected that the landlords would fix up her rental unit and then charge a significantly higher rent. The tenant acknowledged that the landlord now has some permits for work on the unit although she testified that she is not certain what those permits are for. She also provided undisputed testimony and evidence that the landlord had applied for permits after issuing the 2 Month Notice to the tenant.

Despite some reservation about the landlord's true intention in ending this tenancy, the tenant agreed that her personal circumstances related to work and relationships would allow her to vacate the rental unit at the end of October 2015. The landlord's representative was reasonable and candid in assisting in resolving this matter. As a result of that meeting of minds, the landlord and the tenant were able to resolve this matter by way of a settlement.

### Analysis

During the hearing, the relevant legislation, including section 49 and 51 regarding the responsibilities of a tenant and landlord when a tenancy ends as a result of a 2 Month Notice were reviewed;

#### **Landlord's notice: landlord's use of property**

**49** (1) In this section: ...

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

...

...(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

...

(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:

(a) demolish the rental unit;

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

(c) convert the residential property to strata lots under the [Strata Property Act](#);

(d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The landlord has provided a 2 Month Notice to End Tenancy in accordance with the appropriate form, timelines and service procedures within section 49(2) of the *Act*. The landlord has now secured permits to take steps towards renovation or repair of the rental unit. While the tenant initially disputed this notice pursuant to section 49(8) of the *Act*, the tenant and landlord have negotiated a more appropriate end of tenancy date so that the tenant can vacate in a more comfortable manner.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

**Pursuant to section 63, as an order to both parties, I record the terms that the Parties mutually agreed as follows:**

- 1) The tenant agreed to vacate the rental unit on or before October 31, 2015 at 1:00 pm.
- 2) The landlord agreed that the tenant will pay rent as follows until the end of the tenancy in the amounts as follows;
  - August 1 ,2015: \$1074.00

- September 1, 2015: \$1074.00
  - October, 2015: no rent to be paid by tenant for this month pursuant to section 51 of the *Act*.
- 3) After condition inspection and any agreed deductions, the security deposit will be returned to the tenant.
  - a) The security deposit refund amount will include an additional \$50.00 paid by the landlord to the tenant to compensate the tenant in recovering the filing fee for this application.
  - 4) These terms comprise the full and final settlement of all aspects of this dispute for both parties.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I grant an Order of Possession dated October 31, 2015.

I order the landlord to compensate the tenant in the amount of \$50.00 to recover the filing fee for this application with the return of the tenant's security deposit at the end of tenancy.

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 13, 2015

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Residential Tenancy Branch

