



# 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

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order cancelling a Notice to End Tenancy for Landlord's Use of Property issued on September 24, 2015 (the "Notice").

Both parties attended the hearing. The Landlord was represented by the building property manager, B.K. as well as the building manager, J.R. The Tenant appeared on her own behalf and was assisted by an advocate, D.D.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

J.R. testified on behalf of the Landlord. She stated that the tenancy began on February 1, 2012. She confirmed that the one bedroom rental unit is located within a 42 unit apartment building. J.R. stated that monthly rent for the one bedroom rental unit at the

time the tenancy began was \$1,050.00 and at the time of the application the rent was \$1,085.00.

B.K. testified that she issued the Notice on September 24, 2015. She testified that the reasons for issuing the Notice are because the unit requires "some renovations". B.K. also stated that the work that was required to the rental unit does not require permits yet due to the extensive nature of the renovations the Landlord requires vacant possession for 2 months. According to B.K. the nature of the renovations involved replacing the bathroom fixtures and vanity as well as the flooring and replacing the kitchen appliances, cabinets and flooring.

B.K. testified that they are simply replacing the fixtures and cabinets in their current location, such that they do not need an electrical or plumbing permit. B.K. further testified that she had a "visit from the City" as the electrical inspector came to inspect the electrical.

B.K. also stated that there is an ongoing leak from the rental unit to the garage. To determine the location of the leak she believes the entire floor of the rental unit will need to be removed and as such vacant possession will be required for this repair as well. No evidence was provided in support of this claim.

In response to my question as to why the rental unit needed to be vacant, B.K. stated that the kitchen cabinets need to be custom made and this requires 3 weeks. She also stated that the rental unit is a "messy unit" and would not be possible to complete the renovations while the Tenant was in the unit.

B.K. testified that approximately 20 of the rental units in the building have been renovated thus far. She further stated that based on the timeline for these other units in the building she estimates that the subject rental unit will require 6-8 weeks to complete the renovations. B.K. confirmed that of the 22 other rental units which either have been or are being renovated, all those tenancies came to an end.

B.K. stated that she was agreeable to the tenancy continuing to the end of December 2015 or to January 31, 2016 as she confirmed the renovations for this rental unit are not scheduled to begin at any set time.

J.R. testified that the renovated one bedroom units are now renting for \$1,525.00-\$1,575.00. J.R. further stated that in August of 2015, they offered the Tenant to move to a renovated suite on the same floor, and to begin a new tenancy whereby the Tenant

would pay approximately \$1,525.00. J.R. testified that it was not possible to move the Tenant to a non-renovated unit as any empty unit is being renovated.

In cross examination, D.D. asked B.K. if the City had issued a stop work Order the day before the hearing (December 8, 2015). B.K. confirmed that in fact the electrical inspector had attended the day before and issued a "Stop Work Order". When she was asked why the "Stop Work Order" was issued, B.K. responded that she was not there and was not "sure" what they wanted. She then stated that she understands that the electrical inspector believes that the work requires permits.

The Tenant testified on her own behalf. She was also assisted by her advocate D.D. D.D. submitted that the Notice should be set aside because the Landlord did not provide any evidence of the nature of the work required aside from their oral testimony. The Advocate also submitted that an adverse inference should be drawn because the Landlord failed to provide any documentary evidence in support of the Notice. The Advocate also stated that the Landlord testified she had "original plans" which she intends to discuss with the City, yet she did not provide these plans in evidence at this hearing.

The Advocate also submitted that the Landlord failed to provide evidence from the persons completing the renovations, which would have provided the necessary details as to the extent of the work required and the impact on the tenancy.

The Tenant testified that when she returned home yesterday (December 8, 2015) she saw the "Stop Work Order" which was affixed to the rental building's front entrance door. The Tenant stated that the document indicated that the Landlord was in violation of "building, electrical and plumbing."

The Advocate submitted that Landlord claims they are doing "cosmetic renovations to spruce up the building" which in turn allows them to increase rent from \$1,000.00 to \$1,500.00. The Advocate also noted that the Landlord has failed to provide proof that they don't require permits, yet this appears to be contrary to the City's position as the Landlord has been issued a "Stop Work Order".

In reply, the Landlord stated that she wanted the Tenant to confirm in writing that she did not want the plumbing repairs to be completed to her rental unit and further that she, as the Tenant, accepted that the work was required and would not pursue any claim against the Landlord for any health hazard created by the plumbing issues hazard for her and her daughter. The Landlord was reminded that the Landlord did not have an

application before me and was further informed that such relief was not available within the *Residential Tenancy Act*.

### Analysis

The Landlord issued the Notice pursuant to section 49 of the *Residential Tenancy Act*. 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 49(8) of the *Residential Tenancy Act* for an order setting aside the Notice.

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.)

B.K. and J.R. testified that the renovations were extensive and involved completely replacing the fixtures, cabinets and floors in the bathroom and kitchen of the rental unit. Despite the claimed extensive renovations, B.K. insisted permits were not required.

In cross examination B.K. admitted that a “Stop Work Order” had been issued on December 8, 2015. It appears as though this “Stop Work Order” was issued because the City believes the Landlord requires permits.

I find that by failing to obtain the plumbing, electrical and building permits, and failing to provide proof that the Building Inspector has provided the required approval, the

Landlord has failed to meet the requirements of section 49(6). Accordingly, I find that the Notice is not valid.

I find that the extent of the plumbing and electrical 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 Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

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: December 09, 2015

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Residential Tenancy Branch

