



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacific Northwest Ventures Co. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This was a hearing with respect to the tenant's application for a monetary award. The hearing was conducted by conference call. The applicant was represented by her former co-tenant of the rental unit. The landlord's representative called in and participated in the hearing. The tenant and the landlord have exchanged documentary evidence prior to the hearing

### Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental property is an apartment building in Vancouver. The tenant did not provide a copy of a tenancy agreement. The tenancy apparently began in or about 1999.

The landlord served the tenant with a two month Notice to End Tenancy dated May 21, 2013. The Notice to End Tenancy required the tenant to move out of the rental unit by August 1, 2013. When the Notice was served the applicant and her roommate, A.J.K. resided in the rental unit. The Notice to End Tenancy was given on the ground that the landlord had all necessary permits and approvals required by law to demolish the rental unit or to repair the rental unit in a manner that requires the rental unit to be vacant.

After the Notice to End Tenancy was given the landlord advised the tenants and all other occupants of the rental property that because asbestos had been found in the rental property, permits would be required from the City of Vancouver for the asbestos removal before work could proceed on the planned renovations. The landlord offered to allow the existing occupants to remain in the rental property for an additional 8 to 10

months and to pay the previously promised incentives at the end of that period. The landlord had offered tenants compensation in the amount of two months' rent and a payment of \$1,000.00 as a moving allowance. The landlord offered those tenants with month to month tenancies the last month free of rent plus a \$600.00 moving allowance.

The tenants responded to the landlord's offer; they said they would be prepared to stay in the rental unit, until May, 2014 upon certain conditions. The tenants requested free rent for July, 2013 as well as free rent for April, 2014, plus a \$600.00 moving allowance. The tenant made it a condition of the offer that the landlord sign a new lease agreement adding A.J.K.'s name as a tenant.

The landlord did not agree to the tenants' terms, but said that it was prepared to allow tenants to continue until the end of April on the same terms as originally proposed. The tenants chose to move out in August, 2013. The landlord then re-rented the unit to a new tenant at the same rent for a fixed term beginning September 1, 2013 and ending April 30, 2014.

The tenant waited until July 14, 2015 to apply for dispute resolution. The tenant claimed payment of the sum of \$10,000 as damages. The tenant claimed to be entitled to an award of damages based on her contention that the Notice to End Tenancy was given in bad faith and under false pretences. The tenant claimed that the landlord gave the Notice to End Tenancy fraudulently, knowing that it did not have the required permits and she claimed that the landlord refused to grant a lease to the tenants, but then signed a lease with a new tenant. The tenant claimed to be entitled to damages for emotional strain resulting from the improper eviction.

The landlord's representative testified that, that contrary to the tenant's submissions, he did not enter into new tenancy agreements with the other occupants of the building. All of the occupants of the rental property, save for the tenants, agreed to continue their tenancies upon the terms proposed by the landlord.

The landlord's representative denied the tenant's assertion of fraud and bad faith. He said that the permits that caused the delay were required by the City only after the landlord's contractor identified asbestos in the structure, which required permits and a remediation plan. The landlord testified that he notified all tenants as soon he learned of the delay and requirement for permits. The landlord testified that he did not enter into new tenancy agreements with any of the existing occupants, only with the new tenant who agreed, after the tenants moved out, to enter into a fixed term rental for eight months.

## Analysis

Section 49 (6) of the Residential Tenancy Act provides that: “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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.” (emphasis added)

There is a policy guideline with respect to the good faith requirement. It provides that:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The landlord's representative testified that it was only after the Notice to End Tenancy was given that the presence of asbestos in the rental property was discovered and immediately after the discovery and knowledge of the need for further approval and permits became known that the landlord contacted all the tenants of the rental property and offered to continue their tenancies. I find that the landlord's prompt notice to the tenants supports the testimony of the landlord's representative that the original notice was given in good faith. The tenant's evidence confirms that when the landlord offered to continue the tenancy for an additional eight months, the tenants had made no arrangements to move and had not committed to rent or buy any other accommodation. Despite being informed that they could continue to rent the unit, the tenants elected to move out and did so in August. The tenant now claims compensation in the amount of \$10,000.00, which presumably includes the statutorily mandated compensation provided by section 51 (2) of the *Residential Tenancy Act*, being the equivalent of two months' rent as compensation.

Section 51 (2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Policy Guideline No. 11 with respect to amendment and withdrawal of Notice states:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

There is nothing in the legislation itself that addresses the withdrawal of a Notice to End Tenancy, in particular a Notice given for landlord use. I agree generally with the proposition that a party may not unilaterally withdraw a Notice to End tenancy, but I consider this policy statement to have greater application to notices for cause, for non-payment of rent and to tenants' 30 day notices. I apprehend that the reason for this policy is that a party who has been given a notice may have accepted it and made arrangements to move as a result of receiving the Notice; a party giving a Notice should not be able to withdraw or cancel it if that will prejudice the other party who has accepted it and acted upon it; that is why generally a Notice may not be unilaterally withdrawn.

It is my view that where the Notice is one given for landlord's use there are additional considerations because of the good faith requirement with respect to such notices. If a landlord in good faith gives a two month notice predicated upon particular circumstances and those circumstances change before the effective date of the Notice, then the good faith requirement compels the landlord to advise the tenant of the change in circumstance and advise that the reason for giving the notice is no longer valid. It is my finding that in the specific case where tenants have not altered their position to their detriment in reliance upon the notice, then the landlord should be permitted to withdraw it where a change in circumstances has eliminated the necessity for the Notice. To hold otherwise would punish a landlord for acting in good faith and unjustly enrich a tenant who has not been harmed by the withdrawal of the Notice. I find that the tenants were notified by the landlord of the change in circumstance before they had acted to their detriment in reliance upon the Notice. They knew that they could continue to rent the unit for a further eight months, but instead of accepting the landlord's proposal, the tenants sought to introduce new terms, including the creation of a new tenancy agreement and payment of additional compensation. I find that the tenants elected for their own reasons to move out of the rental unit eight months before they were required to do so. It is my finding that the landlord withdrew the Notice to End Tenancy before it was acted upon and that the tenancy ended pursuant to the tenants' unilateral decision to move out in August, 2013. I find that the tenants are not entitled to the equivalent of two months' rent as compensation, nor are they entitled to any amount for other

damages or compensation, including damages for mental or emotional strain. This claim is dismissed without leave to reapply.

Conclusion

The tenant's claim is 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: January 4, 2016

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Residential Tenancy Branch

