



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Madden Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNL, FF

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a two Month Notice to End Tenancy for Landlord's Use of the Property and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on January 12, 2016 be cancelled?

### Background and Evidence

The parties agreed that the facts set out in relation to this tenancy in a previous decision, referenced by the tenant, were correct (see cover page for file number). The tenant has lived in the unit for almost 30 years. Rent is due on the first day of each month; currently \$864.00 per month. Approximately three years ago the current landlord purchased the 29 unit building.

The tenant confirmed receipt of a two month Notice to end tenancy for landlord's use of the property. The Notice was issued on January 12, 2016, with an effective date of March 31, 2016. The one reason for ending the tenancy given on 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 parties confirmed that the tenant applied to cancel a one month Notice to end tenancy for cause issued by the landlord in October 2015; effective December 1, 2015. The reasons given on that Notice related to interference and disturbance cause by the tenant, jeopardizing the health and safety of another occupant or the landlord and placing the landlords' property at significant risk. A hearing was held on January 6, 2016 in response to the tenants' application and on January 8, 2016 a decision was issued.

The landlord had issued the Notice as they have converted the rental building to a non-smoking residence. The tenant has smoked in her rental unit for the entire term of her tenancy. In the decision issued on January 8, 2016 the arbitrator found that smoking had not been prohibited previously and that the parties had not agreed to sign to new terms for the tenancy, prohibiting smoking. The other three smokers in the building had not been issued Notices ending tenancy. The arbitrator did not accept that the smoking was causing any risk to others, that any health risk was posed to others or that the property was placed at risk. The Notice ending tenancy was cancelled.

The tenant said that the day prior to receiving the January 8, 2016 decision the landlord issued the current Notice ending tenancy.

The tenant read from Residential Tenancy Branch policy regarding the good faith requirement. The tenant said that the attempt to evict her is unfair as no one else has been targeted for eviction and that the repeated Notices are causing a loss of her quiet enjoyment. The tenant said that there are three other smokers in the building and she was surprised when she was the only who received the previous Notice. The tenant said that by issuing the second Notice to end her tenancy the landlord has shown they are not acting in good faith and that there is not an absence of malice.

The landlord presented a list of items they wish to repair in the rental unit:

- Remove and install carpet in living room, dining room, bedroom, hallway;
- Remove and install vinyl floor in bathroom and kitchen;
- Sand, prime walls and ceiling and paint;
- Remove and replace doors from kitchen cupboards and bathroom vanity and replace;
- Sand and paint the kitchen and bathroom cabinets;
- Install tile backsplash;
- Refinish existing bathtub; and
- Replace window curtains.

The landlord provided a copy of an email issued by a city permit technician on January 28, 2016 who indicated that none of the repair items would require a permit. The technician stated that some of the items may contain hazardous materials and would not be safe for a tenant; this would include removal of vinyl flooring and the sanding. The landlord was referred to Worksafe BC and was provided a phone number.

The landlord has yet to contact Worksafe BC or carry out any investigative work to establish whether there is the presence of hazardous materials in the flooring. The landlord said that all surfaces are coated with nicotine and will require sanding, which could reasonably pose a risk. The unit will need to be primed with a product that emits strong odors; this is required to seal the walls, given the years of smoking in the unit.

The landlord provided a copy of a January 28, 2016 email setting out an estimate for painting the unit. The quote indicates the unit requires significantly more attention and preparation as surfaces are stained by nicotine. The surfaces must be primed with shellac. No estimate of time required for the painting is provided in the quote.

A copy of a January 28, 2016 quote for removal and installation of carpet was supplied.

The landlord submitted a January 27, 2016 quote for new cabinet doors.

A January 29, 2016 estimate for refinishing the bathtub was supplied.

The tenant said that she painted the unit within the first 10 years of the tenancy. Approximately five years ago the kitchen appliances were replaced. The bathroom tile is five to seven years old. No other maintenance or updates of the unit have been completed.

The tenant said that four or five years ago a flood occurred in some lower units of the building and that all repairs required were completed with the tenants in place. The tenant thinks it would be easier for the landlord to complete the repairs if she were not in the unit and that it would be cheaper, but she does not believe the landlord needs her to move out. The tenant is willing to leave the unit for several weeks, if that would assist the landlord. She is also willing to pack up small items and place items in the middle of the room, under cover. The tenant would take her plants and two cats elsewhere.

The tenant believes the landlord can complete any work in a piecemeal fashion over a short period of time and she is willing to shift and move items. A schedule of work to be completed would help the tenant to assist.

The landlord said it would not be practical or safe to allow the tenant to remain in the rental unit. The landlord believes there are potential health risks to the tenant being in the home when sanding occurs and when the floors are replaced. It is unlikely the painters could work around the belongings that are in the rental unit; the landlord thinks it would be impossible for the workers to complete the repairs unless the unit was vacant.

The tenant would be given first right of refusal to rent the unit once repairs were completed. The parties would sign a new tenancy agreement which would prohibit smoking and include some level of rent increase, to market rent. The landlord said it is true they do not want the tenant there as a smoker. The unit is in desperate need of upgrades and the landlord does not wish to leave it in its' current condition.

The landlord said he was willing to alter the effective date of the Notice to May 31, 2016.

The tenant said she has had 130 days of stress that is affecting her on all levels.

### Analysis

Section 7.18 of the Residential Tenancy Branch Rules of Procedure provides:

#### ***7.18 Order of presentation***

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof.*

*One instance when the respondent bears the onus of proof is where a tenant applies to set aside a Notice to End Tenancy. In such a case, the hearing will begin with the landlord presenting first.*

Therefore, as the landlord has the burden of proving the reason given on the Notice, the landlord provided testimony in support of the Notice; with the tenant responding.

The tenant raised the issue of good faith, which Residential Tenancy Branch Policy refers to:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

There was no dispute that this is the second attempt since October 2015 made by the landlord to evict the tenant. The first attempt related to the fact that the tenant is a smoker living in a building that has been declared smoke-free by the landlord. The January 8, 2016 decision issued by an arbitrator found that there was no prohibition in the tenancy terms related to smoking and that the October 2015 Notice issued for cause was of no force.

Within six days of the January 6, 2016 hearing the landlord issued the current two month Notice ending tenancy.

There was no dispute that during this almost 30 year tenancy very little routine maintenance has taken place. Residential Tenancy Branch (RTB) policy suggests a rental unit should be painted once every four years and that carpet and tile flooring have a useful life of 10 years. From the evidence before me there is no doubt that the rental unit is well overdue for what should have been completed as routine maintenance. The landlord has decided to make the repairs, not based on any request by the tenant, but on the basis of the general state of the rental unit after so many years of little attention given to the unit.

From the evidence before me I find that much of the work could easily be scheduled for completion when the tenant is present. Bathtub refinishing, curtains, cabinet door replacement and carpet and tile replacement are all commonly dealt with while people remain in their homes. The potential for hazard when removing vinyl flooring may exist; however I find that to end a tenancy based on the fear of hazard; without any evidence of such, forms insufficient cause. It may be that removal of the vinyl flooring may pose a risk but the landlord is only operating on the basis of caution, not fact. Further, the tenant has said she would be willing to vacate the unit for a short period of time to facilitate repairs if any such risk should be posed.

This leaves the painting and the sanding of the cabinets as the remaining issue. There was no dispute that painting is long overdue. The tenant has offered to cooperate with this work, by covering her belongings and removing plants and her pets and staying elsewhere for a period of time. To say that the tenant must vacate would mean that every time some sanding and painting, even beyond a normal light sanding, is required in a rental unit the landlord must be given vacant possession. I do not accept that this was the intention of the legislation and policy.

While the work in this unit may require significantly more attention and preparation for painting, I can only assume how long this might take as those details were not provided and the person who issued the quote was not available to be questioned.

Therefore, I find on the balance of probabilities that the landlord has failed to prove that the tenant must vacate the unit to allow painting and sanding. Painting is an activity that a landlord can expect to undertake very four years or so. Other than the additional sanding and priming required in this unit I can see no reason why the landlord requires vacant possession other than for convenience, as the tenant is willing to accommodate the work.

In relation to the good faith matter raised by the tenant, I find that the current Notice issued almost immediately following the hearing held on January 6, 2016, combined with the testimony, leads me to conclude that the landlord is highly motivated to end this tenancy for more than the reason of renovation.

The landlord wishes to convert all rental units in the building to non-smoking units. When the initial attempt to evict the tenant due to smoking failed the landlord determined that renovations would require vacant possession. The landlord would have been well aware of the state of the rental unit when the building was purchased but it was not until the landlord failed to obtain possession of the unit in January 2016 that the landlord again took steps to evict the tenant using renovation as the reason. It is the underlying wish to eliminate the smoking, rather than the repairs that I believe have motivated the landlord to issue the two month Notice ending tenancy.

Based on my assessment of the motivation of the landlord I find that there is an absence of good faith. The timing of the decision to renovate combined with the desire to convert the unit to a non-smoking unit, support this finding. I do not doubt that the landlord would carry out the repairs to the rental unit; however, I find that the landlord has acted in a manner that indicates removal of a smoker from the building is another motive for ending the tenancy.

I have also concluded that while it might be more convenient to have vacant possession of the rental unit to complete the repairs, it is not required. The tenant is willing to cooperate. There is no evidence of any risk that exists; only a suspicion that it might. To accept that the tenant must move because of sanding and painting opens the door to eviction when this regular form of maintenance is carried out. Further, it is due to the negligence of the landlord, although not as much this current owner, that the unit has been allowed to become so in need of additional sanding and priming. The tenant has not been prohibited from smoking and regular painting by the landlord did not occur during the last almost 30 years. Regular maintenance would have kept the unit to a better standard.

Therefore, based on the absence of evidence to support the need to for vacant possession of the rental unit, and based on the absence of good faith, I find that the two month Notice to end tenancy for landlords' use of property issued on January 12, 2016 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenants' application has merit I find that the tenant may deduct the \$100.00 filing fee cost from the next months' rent due.

### Conclusion

The two month Notice to end tenancy for landlord's use of the property issued on January 12, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding and 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: March 08, 2016

---

Residential Tenancy Branch

