



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL OPC OPL MNDC FF

### **Introduction**

Both parties attended the hearing. They agreed that the Two Month Notice to End Tenancy dated April 27, 2016 to be effective June 30, 2016 was served personally on the tenant on April 27, 2016. The evidence is that the tenant filed his Application to Dispute on May 11, 2016 and served it on the landlord in his office on May 24, 2016. The tenant said someone advised him he had 15 days to file his Application. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel the notice to end tenancy for owner's own use of the property pursuant to section 49; and
- b) To compensate the tenant for emergency repairs and for lack of maintenance of the property contrary to section 32;

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that they have all the necessary permits and approvals required by law to demolish, renovate or repair the rental unit in a manner that requires the rental unit to be vacant? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The landlord objected to the late service of the Application and the late service of some evidence which he received on June 10, 2016 at 5:30p.m. The evidence was of some emails between the City and the tenant. The landlord objected there was no time to reply with similar City input. The undisputed evidence is that the tenancy commenced in June 2010, rent is \$850 a month and a security deposit of \$425 and a pet damage deposit of \$425 were paid. The tenant said he had a fixed term lease for 10 years both in writing and verbally. The landlord denied this. The manager who began managing the property said all he had on file was an email from the tenant saying he wanted to stay there 5 years. He verified with the owner that there was no 10 year lease either written or verbal. The manager pointed

out that even if a 5 year lease was agreed, which he did not believe had happened, the lease would have expired in June of 2015.

The landlord agreed they had no permits or approvals but said they are not required by law for the work they are doing. They are taking out all the flooring, bathrooms and kitchen and installing new. They said the scope of the work requires the property to be vacant. They said a tenant could not live there without a bathroom and kitchen for months. The home is 30 to 35 years old and when they remove the bathroom and kitchen, they may find plumbing or electrical issues which will require permits but they do not know until they are uncovered. The roof will also be replaced. When it is renovated, the owner intends to move into the property as he has an accepted offer on his own home.

The tenant said he had enquired from the City and no permits were issued yet. He said he had done a significant amount of work on the property over the years and had not been sufficiently reimbursed. He supplied no invoices in evidence to support the amount of money he had spent or the number of hours. He named no amount of compensation in his Application but provided a copy of an email sent to the landlord in February 2016 containing a list of items he had done and complaints about items left undone. The manager replied by email noting the tenant had been compensated with reduced rent and other concessions. In the hearing, the landlord noted the tenant owed rent and the tenant said he was still owed money for his work. The tenant also noted the property had been for sale at one time and seemed to believe that the tenancy could not be ended on those grounds. I informed him that a prospective purchaser could require vacant possession if they wanted it for their own occupancy but I declined to consider it further as this was not the basis for the subject Notice to End Tenancy.

Included with the evidence is a copy of the Notice to End Tenancy, some emails about property issues such as accumulated garbage and a one page Appendix to a Rental Agreement (no complete agreement provided).

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the tenant filed his Application for Dispute Resolution in time according to section 49 of the Act which states as follows:

*49 (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.*

However, I find he did not serve the landlord within the legal time limits. Rule 3 of the Residential Tenancy Branch, Rules of Procedure, state the Application must be served within 3 days of the Application being available. I find the tenant in serving the Application on May 24, 2016 was well beyond the legal time limit in Rule 3. I also find he served the landlord too late with his evidence so the landlord did not have time to respond. As a result, I will give limited weight to the late evidence.

I find the evidence of the landlord credible that they require the home to do significant renovations that require the home to be vacant. I find that the landlord does not need permits by law to replace a kitchen and bathroom or floors. As stated in the hearing, he may require electrical or plumbing permits once the existing wires and pipes are exposed if there are issues. I dismiss the Application of the tenant to set the Notice aside. I find the Notice to End Tenancy valid and the landlord entitled to an Order of Possession. The tenancy is terminated on June 30, 2016 but the landlord requested an Order of Possession effective July 31, 2016.

The landlord noted in the hearing that the tenant should pay them the outstanding rent. Pursuant to section 51 of the Act, a two month Notice to End Tenancy under section 49 of the Act requires the landlord to give the tenant one month free rent. Accordingly, the tenant will have free rent for one month. As discussed in the hearing, the landlord is at liberty within the legislated time limit of 15 days in section 38 to claim against the security and pet damage deposits and has further time of up to two years to make other claims against the tenant.

Regarding the tenant's claims for a rent rebate and compensation for work done on the property, I find he stated no amount on his Application and provided no invoices or a list of monetary claims for work done so the landlord had no opportunity to answer to this case. According to the principles of natural justice, a party must have opportunity to consider and respond to the case against them. I dismiss this portion of his claim and give him leave to reapply.

### **Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on June 30, 2016. An Order of Possession is issued to the landlord effective July 31, 2016 as they requested.

The Application of the tenant for rent rebates or other compensation is dismissed with leave to reapply within legislated time limits. No filing fee was paid so none is awarded.

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: June 16, 2016

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Residential Tenancy Branch