



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC

### Introduction

This hearing was convened in response to an application made by the Tenant on December 30, 2016 pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant states that his claim for compensation is in relation to repairs. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure requires that all matters contained in an application must be related. As the matter of compensation is not related to whether or not the tenancy ends I dismiss this claim with leave to reapply. The Tenant clarified that errors were made in making the application, that there is no claim for return of the security deposit and no claim in relation to a notice to end tenancy for cause.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

### Background and Evidence

The tenancy started in 2010. Rent of \$545.00 is payable on the first day of each month. On December 14, 2016 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use. The reason set out on the Notice is that the Landlord has all the permits required to either demolish the unit or to make renovations that require an empty unit.

The Landlord states that they do not believe that the Tenant made its application in time to dispute their notice as their copy of the application does not include a date stamp. I note that the Tenant's application provided for this hearing is stamped December 30, 2016.

The Landlord states that they have no permits as they have not determined yet that they need any. The Landlord states that they plan to gut the whole unit and then make assessments. The Landlord states that the Tenant has caused damage to the unit and that there are damages caused by a past rodent infestation. The Landlord states that they need to investigate whether there is any damage in the walls and subfloors. The Landlord states that the kitchen cabinets were damaged by the infestation and the floors also require removal. The Landlord does not know how long this is planned to take. The Landlord states that both bathrooms have to be renovated. The Landlord states that they will not know about plumbing and electrical work until the initial removal work is done. The Landlord does not know whether the rodent infestation caused any harm to the electrical. The Landlord states that they do not know the extent of the damage to the ceiling. The Landlord states that they want to investigate problems as they do not know the extent of damage. The Landlord states that they want to get at the furnace venting to determine if there is any damage there. The Landlord states that there is likely no plumbing work required unless they find a problem with the drainage. The Landlord states that they do not even know if there is a drainage problem. The Landlord states that they have not done any investigations on the drainage yet. The Landlord does not know how long each room will take or how long all the work will take and the Landlord guesses up to a month or maybe longer. The Landlord cannot say

whether any of the work can be done in stages. The Landlord states that the unit requires updating, that they plan to obtain permits as needed, and they want to do all the work at one time instead of working around the Tenant as it is easier that way.

The Tenant states that he checked with the city and no permits have been issued to the Landlord. The Tenant states that he does have friends and family that could provide the Tenant with a temporary place to stay to accommodate the Landlord for short term repairs. The Tenant states that he did move out of the unit for two weeks in the past in order to accommodate repairs. The Tenant states that he has been asking for repairs since he moved into the unit and none have been done. The Tenant states that the work set out by the Landlord is all cosmetic and that, for instance, only 4 ceiling tiles are damaged and the whole ceiling does not need to be removed and replaced. The Tenant states that all the ducts were changed when the Landlord install a new furnace. The Tenant states that each inspection done by the Landlord sets out the same repairs since the onset of the tenancy and that none of them have ever been done. The Tenant states that the doors, for instance, have required changing since almost the onset of the tenancy. The Landlord states that they could not make some of the repairs because the Tenant is in the way and some repairs were not done because the Tenant caused the damage.

### Analysis

Section 49(6) of the 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, inter alia, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Section 49 of the Act provides that a tenant may dispute a notice for landlord's use by making an application within 15 days receipt of such notice. As the Landlord served the Tenant with the Notice on the door of the unit the Notice is deemed to have been received on December 17, 2016. I accept that the Tenant made its application on December 30, 2016. The Tenant has therefore disputed the Notice within the time required.

The Landlord's evidence is vague in relation to the extent of the renovations that require an empty unit. The Landlord has not provided any evidence of whether any staging of repairs could occur and I do not consider ease as a reason for requiring a vacant unit. I accept the Landlord's evidence that the unit requires updating, but this is not evidence of a requirement for the unit to be vacant. There is no evidence of a timeline for the repairs beyond a vague guess. Permits may or may not be required and no assessment has been done to confirm any electrical or drainage problems and there is no evidence that any electrical or drainage problems exist. Given the Landlord's vague evidence I accept the Tenant's evidence that the repairs are mostly cosmetic in nature. I also accept that the Tenant could accommodate the Landlord for some periods of time for the purpose of making required repairs such as the removal of the kitchen cabinets. As a result I find that the Landlord has not provided sufficient evidence that the unit is required to be empty in order for repairs to take place and that the Notice is therefore not valid. As such I find that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

### Conclusion

The Notice is cancelled and of no effect.

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: February 06, 2017

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Residential Tenancy Branch