



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TREATY DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was assisted by an advocate. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled?

### Background and Evidence

This tenancy began on April 1, 2013. After a one year fixed term, the tenancy continued on a month to month basis. The current rental amount of \$977.00 is payable on the first of each month. Both parties testified that the tenant has received a rent increase notice to \$1013.00 a month as of May 2017. The landlord issued a 2 Month Notice with the following reason for seeking an end to this tenancy:

*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 landlord issued the 2 Month Notice to End Tenancy on February 20, 2017. The tenant applied to dispute the 2 Month Notice on February 21, 2017. The landlord submitted a copy of the 2 Month Notice as well as a "turnover report" prepared by the landlord. The landlord testified that the apartment "desperately needs an upgrade". He

testified that the residential property has undergone major renovations and that the tenant's rental unit is in "very bad shape". The landlord testified that the unit needs its "lustre and shine back". The landlord did not submit any documentary evidence that described a need for repairs within the unit or any photographs for this hearing.

The landlord testified that he requires the unit to be vacant and empty as he intends to: put in new flooring; change the baseboards; remodel the kitchen; retile the bathroom; recoat the bathtub; conduct drywall repair; and paint as well as undertake other upgrades to the unit including but not limited to lighting. The landlord did not submit any contractor quotes or opinion regarding the scale of the work to be done in the rental unit.

The tenant was adamant that she wished to remain in her rental unit. She agreed that the unit was outdated and upgrades would be nice however she has lived in the rental unit for 4 years and does not wish to relocate. She testified that she was willing to relocate on a temporary basis with the assistance of the landlord but that she wants her tenancy to continue.

The tenant's advocate submitted that the landlord has not met their burden of proof to support the issuance of the 2 Month Notice to End Tenancy. The tenant's advocate submitted that the work described by the landlord on the rental unit is cosmetic and could be accommodated with the tenant removed for a brief period or with the tenant in the rental unit. The tenant's advocate made extensive submissions addressing the lack of good faith of the landlord in these circumstances. The tenant testified that her tenancy is being ended so that the landlord can make repairs and seek a higher rental amount.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy for landlord's use when the landlord has all necessary permits and approvals required to demolish, renovate or repair the rental unit in a manner that requires the rental unit to be vacant. With this application by the tenant, the burden falls to the landlord to provide evidence to show that the stated objectives provided on the 2 Month Notice to End Tenancy can only be met with a vacant rental unit. Furthermore, the landlord must provide evidence to show that it is reasonable and necessary to end the tenancy in the circumstances.

Landlords have an obligation to repair and maintain a rental unit so that it complies with health, safety and housing standards required by law. However, the landlord is not at liberty to end a tenancy to meet these obligations. These obligations are part of the

tenancy agreement. The reason given to end the tenancy on the 2 Month Notice in this case is based upon section 49(6)(b) of the Act which provides:

(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;

[emphasis added]

In this case, the landlord did not raise health, safety and housing standards as the reason to conduct repairs. I find that the work the landlord proposed was primarily for cosmetic work including upgrades and improvements. I find that the landlord provided insufficient documentation to support his position with respect to this matter. The landlord did not provide documentary evidence or photographic evidence to support his testimony and submissions. The landlord relied on his own testimony to support the claim that the unit requires repairs and is required to be vacant. However, testimony from a contractor or quotes for the work would have been more useful. Photographs of the unit could at least support his claim that the unit requires substantial repairs and upgrades.

The landlord acknowledged receiving the tenant's application to cancel the notice to end tenancy one month prior to this hearing. The landlord should have been aware of the burden of proof he was required to meet. The landlord should have been aware of the requirements in submitting evidence for this hearing. The Notice of Hearing that forms the main page of the materials sent to each party clearly states,

*Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

If the "good faith" intent of the landlord is called into question, as the tenant has done in this case, the burden is on the landlord to establish that he truly intends to do what he has indicated on the Notice to End, and that he is not acting dishonestly or with an ulterior motive as his primary motive. With respect to an application to end tenancy for landlord's use, the burden is on the landlord to establish not only their true intention in vacating the tenant but, when repairs are to be done, and that it is necessary that the unit be empty to do those repairs. In all of the circumstances, I find that the landlord has not supplied sufficient evidence to confirm his intent to demolish, renovate or repair the rental unit in a way that requires the rental unit to be vacated by the tenant. Beyond the

provision of the notice to end tenancy to the tenant and his testimony at this hearing, the landlord submitted no further evidence to support his intentions with respect to the tenant's rental unit.

Given my findings, I grant the tenant's application to cancel the Notice to End Tenancy. This tenancy will continue.

### Conclusion

I cancel the landlord's 2 Month Notice to End Tenancy. The tenancy will continue until ended in accordance with the *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: March 27, 2017

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Residential Tenancy Branch