



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Podollan Construction  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, ERP, RP

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord make repairs to the unit, site or property.

Both tenants and an agent for the landlord attended the hearing, and the tenants were accompanied by a Legal Advocate. The parties each gave affirmed testimony, and were given the opportunity to question each other and make closing submissions.

At the commencement of the hearing the landlord's agent advised that the landlord's evidentiary material was not provided to the tenants because the landlord's agent did not know it was required. The landlord's agent sought to adjourn the hearing to allow for such service, however the tenants opposed an adjournment. The tenants' Legal Advocate submitted that a previous hearing had been conducted and a copy of the resulting Decision has been provided for this hearing. The landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use of Property which was disputed by the tenants. In that Decision of the director, the Arbitrator noted that the landlord had not provided evidence to the tenants or to the Residential Tenancy Branch, and the notice was cancelled. The landlord is a professional company and ought to have known that evidence was required, and no adjournment should be granted.

I have reviewed the Decision of the director dated March 16, 2017, and I agree with the tenants' Legal Advocate that the landlord ought to have known, and did know that evidence was required to be submitted to the Residential Tenancy Branch and to the tenants prior to the hearing. I find that any adjournment would give the landlord an unfair advantage in additional time and would prejudice the tenants. The application to adjourn was denied and the hearing commenced. None of the landlord's evidence is considered, and all evidence of the tenants is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the landlord should be ordered to make emergency repairs for health or safety reasons?
- Have the tenants established that the landlord should be ordered to make repairs to the unit, site or property?

Background and Evidence

**The landlord's agent** does not know when the tenancy began, but testified that the tenants still reside in the rental unit on a month-to-month basis. A written tenancy agreement exists, but a copy has not been provided for this hearing. Rent in the amount of \$800.00 per month is payable on the first day of each month and there are no rental arrears. The landlord collected a security deposit and a pet damage deposit from the tenants at the outset of the tenancy, but the landlord's agent does not know how much. The rental unit is a 2-bedroom apartment in an apartment complex.

The landlord's agent further testified that the rental unit requires major repairs that will require the rental unit to be vacant. The landlord's agent personally served one of the tenants (SF) with a Two Month Notice to End Tenancy for Landlord's Use of Property on April 1, 2017. A copy has been provided by the tenants and it is not dated but is signed by the landlord's agent and contains an effective date of vacancy of June 1, 2017. The reason for issuing it states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The landlord's agent testified that there is severe mold throughout the entire rental unit in the walls. All flooring, carpeting and everything needs to be replaced. Kitchen cabinets and bathroom vanity, windows, window frames and drywall all need replacing. The person who did the drywall looked through the rental unit, and the landlord's agent believes that person is a professional, but does not recall the date of the inspection. The tenants were present for that assessment.

**The first tenant** (SF) testified that there is no need to vacate the rental unit in order for repairs to be made. The tenant gave the landlord several letters requesting repairs and made several attempts by text messaging asking the landlord to inspect, but the landlord's agents refused.

The tenant denies that there is mold throughout the rental unit, but in the kitchen and by a window sill. Photographs have been provided by the tenants. The people that the landlord has working as maintenance people are not professionals and don't have the expertise to look at the rental unit to assess damages.

The tenant testified that the damages are very minor and don't require demolishing the rental unit. The notice to end the tenancy should be cancelled and the landlord should be ordered to make the repairs. A list of required repairs has been provided by the tenants, including:

- A. assessment and treatment of mold by a person qualified in treating mold;
- B. replace a door;
- C. replace the kitchen counter, caulking around the kitchen sink;
- D. replace the kitchen tap;
- E. repair the kitchen drawer.

**The second tenant** (TB) testified that the landlord did not have a professional person at the rental unit to inspect, but another tenant in the rental building who works as a maintenance person for the landlord. The tenant doesn't believe he is qualified. He gave the rental unit a quick glance and was only there for a maximum of 10 minutes.

The tenant also testified that the landlord is mistaken in her testimony that the notice was given to the tenant's room mate; the landlord actually gave it to the tenant (TB).

**The tenants' Legal Advocate Submits** that mold requires a proper assessment by a professional and the tenants would welcome that. The tenants are willing to cooperate in facilitating assessment and repairs, and are willing to vacate the rental unit for a short period of time if necessary. The tenants seek an order that the landlord obtain a person or technician experienced in mold to assess the extent and the repairs actually required to remediate the mold. The tenants also seek an order that the door be replaced, as well as kitchen counter, kitchen tap and that the landlord repair the kitchen drawer.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, the landlord did not date the notice, which is contrary to the *Act*. However, most importantly, the reason for issuing it is in dispute.

The tenants dispute that the rental unit needs to be vacant in order to make repairs, and I find that the landlord has failed to establish otherwise. The landlord's agent testified that it was assessed by a professional person, but that is also disputed by the tenants, and I am not satisfied that the person who did the assessment is qualified to make such a decision. I find that the landlord has failed to establish that the rental unit needs to be vacant to make the repairs and I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property, and the tenancy continues.

I also find that this is the second time that the landlord has issued such a notice for the same reason, and the tenants' application to cancel the first one was successful. The landlord may not continue to issue notices for the same purpose, and considering that this is the second time the notice to end the tenancy has been cancelled, I order that the landlord refrain from issuing another Two Month Notice to End Tenancy for Landlord's Use of Property for repair or renovation to the rental unit in a manner that requires the rental unit to be vacant.

With respect to the tenants' application for emergency repairs and repairs to the rental unit, the *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. There is no question that repairs are required; the parties agree on that. The landlord's agent testified that there is mold throughout the rental unit but there is no evidence of any assessment other than a quick walk-through by the landlord's resident maintenance person.

The tenants have provided a list of required repairs, and the landlord has that list. The landlord's agent did not dispute that any of the repairs in that list are required, and I order that landlord to make all repairs on the list by the end of June, 2017 or the tenants will be at liberty to apply for monetary compensation for the landlord's failure to comply:

- A. assessment and treatment of mold by a person qualified in treating mold;
- B. replace a door;
- C. replace the kitchen counter, calking around the kitchen sink;
- D. replace the kitchen tap;
- E. repair the kitchen drawer.

### Conclusion

For the reasons set out above, the undated Two Month Notice to End Tenancy for Landlord's Use of Property which contains an effective date of vacancy of June 1, 2017 is hereby cancelled and the tenancy continues.

I order that the landlord refrain from issuing another Two Month Notice to End Tenancy for Landlord's Use of Property for repair or renovation to the rental unit in a manner that requires the rental unit to be vacant.

I hereby order the landlord to make the repairs set out as A through E above by June 30, 2017 and if the landlord fails to do so the tenants will be at liberty to apply for monetary compensation.

This order is final and binding and may be enforced.

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: May 25, 2017

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Residential Tenancy Branch