



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAM WAH TONG HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNL CNQ FF MNDC ERP RP OLC

### **INTRODUCTION:**

Both parties attended the hearing and gave sworn testimony. They confirmed the tenant was served with a Two Month Notice to End Tenancy dated April 24, 2017 to be effective July 1, 2017 by posting it on his door and the landlord agreed he received the Application for Dispute Resolution by registered mail. The tenant applies pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End tenancy and to obtain a monetary order for emergency repairs and compensation for loss of heat.

### **ISSUES:**

Does the rental unit need to be vacant in order for the landlord to do renovations? Has the tenant proved on a balance of probabilities that he is entitled to compensation for emergency repairs and for loss of his peaceful enjoyment due to no/ or inadequate heat?

### **BACKGROUND AND EVIDENCE:**

The landlord and tenant agree that the tenancy began in June 2005, rent is currently \$858.01 and a security deposit of \$300 was paid. The tenant said he was puzzled by the Notice to End Tenancy he received for it had a heading about a subsidized unit and his unit is not subsidized. It was clarified that this was the usual Two Month Notice to End Tenancy and the heading is applied to various situations. However, the box on the second page of the Notice stated that the reason for ending this tenancy was

- *The landlord has all the 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 said it takes 3 weeks to a month to renovate a unit. The building is over 100 years old and it has become apparent to him that it needs major work. He plans to

- Dismantle the old kitchen cabinets and renovate the kitchen completely
- Some walls have to be replaced as the cabinets and sinks are fastened to them
- Renovate the bathroom entirely with new toilet and sink
- Refloor or refinish existing floors in each unit
- Upgrade the electrical system with circuit breakers instead of fuses; he is having a professional electrician to do a quote on what is necessary. The electrician will get any necessary permit.

The tenant pointed out that the electrical permit was not yet obtained contrary to the Notice. He said the cabinets and flooring are ordered already and a contractor told him that the kitchen work should take about 3 days. The tenant alleges vacant possession is not necessary to renovate his unit. He stated his partner rents another unit in the building and he can stay in that unit for periods of time while work is being done. He also said he is out of town a lot so the unit would be unoccupied for those periods of time also.

The landlord said this tenant has been very uncooperative in the past and he doubts his cooperation with the renovation. He said the tenant refused to provide him with the copy of the hydro and fuse bills for which he claims compensation today and had not taken delivery of a new refrigerator that was ordered because he would not cooperate with the store where the landlord had bought it. The tenant said the store representative was rude and he did not want to deal with her.

The tenant also claims compensation of \$150 for three fuses he bought and loss of heat from February 28, 2017 to March 4, 2017 and then inadequate heat and extra electric costs for the use of an inadequate space heater to March 16, 2017 when a new boiler was installed. The landlord said he offered 5% rebate of rent for loss of heat although he did everything possible to get the boiler replaced as soon as possible. In evidence is a copy of a Notice to the Tenants dated March 1, 2017 stating the boiler was broken, a company had been hired to replace it ASAP and a space heater would be provided for each unit. There were complications related to asbestos that had to be handled. The work was completed on March 16, 2017. On March 6, 2017, there was also a power outage and an electrician was hired and he replaced fuses at a cost of over \$900 (invoice in evidence).

**Analysis:**

Section 49(6) of the Act states that a landlord may end the tenancy if he has all the permits and approvals required by law and intends in good faith to (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I find the main issue in this case is whether the landlord in good faith intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Apparently the landlord is obtaining an electrical permit through his electrician and it was not alleged that he needed further permits. Two cases relevant to the point are *Berry v. BC* [2007] B.C.J. No 368, 2007 BCSC 257, and *Allman v. Amacon Property Management Services Inc.*[2006] B.C.J. No. 1022, 2006 BCSC 725 (which said that cost effectiveness should not be one of the criteria when deciding to do end the tenancies in the whole building vs. doing it unit by unit).

The tenant raised the issue of good faith and said the landlord is just using this to evict tenants and raise rents. Residential Policy Guideline 3 defines good faith as an abstract quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. It notes the landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End

Tenancy and this might be documented by such items as a Notice to End Tenancy at other rental units, a government document permitting change (e.g. a building permit) and a contract for the work. I find the weight of the evidence is that the landlord is not acting in bad faith in ending this tenancy. I find he honestly intends to do a substantial renovation as evidenced by the work description and contracts and the fact that he has done other units already in like manner

The issue remains whether or not the manner of the renovation of the rental unit requires the rental unit to be vacant. Based on the evidence, I find as fact that the landlord is doing a substantial renovation to the subject unit and doing further substantial renovations to other units. I find as fact that the total time as provided in evidence, provided nothing unexpected occurred, would be approximately one month.

Judge Williamson pointed out in *Berry*, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place". In that case, the arbitrator had found that the unit only had to be empty for three days and that the tenants were willing to vacate for the three days.

In this case, I find as a practical matter that the tenant's unit has to be vacant for approximately 3-4 weeks for the renovations on it to proceed and the tenant has offered to vacate as needed. I find that the tenant's offer to relocate to another unit while his unit is being renovated is viable as he and his partner already rent another unit in the building. In this case, I find as fact that it is possible to renovate the subject suite while it is occupied as in the *Amacon* case.

In respect to the tenant's claim for compensation for damages, section 7 of the Act provides an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find insufficient evidence that the landlord through act or neglect caused the tenant's loss of quiet enjoyment. I find the landlord acted promptly to have the boiler replaced

and to have the fuses replaced. I find there was a withdrawal of the heating facility for 5 days through no fault of the landlord and pursuant to section 27 of the Act, the landlord gave notice and a rebate of rent. The landlord offered a rebate of 5% but the tenant states it is not sufficient. I find insufficient evidence to support his claim for further compensation for loss of peaceful enjoyment. I find him entitled to the 5% of rent offered and a monetary order will be issued for this amount of \$42.90. As explained to the parties in the hearing, if the tenant's behavior is causing problems to the landlord or other occupants, the landlord may serve a Notice to End Tenancy pursuant to section 47 but I declined to hear complaints in this hearing as they were not the issue.

I find heating cost is included in his tenancy agreement and I find his evidence shows he had to spend an extra \$10.53 for electric heat while the boiler was being replaced so I find him entitled to compensation for this. I find the weight of the evidence is that the landlord paid an electrician to replace fuses so I find him not entitled to compensation for fuses.

### **Conclusion:**

I find on the facts that vacant possession of the tenant's unit is not necessary to *demolish* the rental unit or repair the rental unit. I set aside and cancel the Notice to End Tenancy for Landlord's Use of the Property dated April 24, 2017. The tenancy is continued.

As the tenant is successful in his Application, I find him entitled to recover the filing fee. A monetary order is issued to the tenant as calculated below:

Rent rebate –loss of heat 5 days	42.90
Extra cost electric heat	10.93
Filing fee	100.00
<b>Monetary Order to Tenant</b>	<b>153.83</b>

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 14, 2017

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Residential Tenancy Branch