



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1072710 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This is an application brought by the tenant(s) requesting orders canceling Notices to End Tenancy that have been given for landlord use.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Preliminary Matter

The advocate for the tenants has requested that the evidence supplied by the landlord be deemed inadmissible as it was supplied outside the time frame required under the Residential Tenancy Act. The advocate states that the evidence was not received until June 20, 2017, even though the Act requires that all evidence be supplied at least seven days before the hearing.

The landlords responded by stating that they had mailed their evidence, to both the tenants and the Residential Tenancy Branch, on June 16, 2017 and therefore they believe they were within the required timeframe.

It is my decision that the landlords evidence was not served within the required timeframe, as documents sent by registered mail are not deemed received until five days after mailing.

Section 90 of the Residential Tenancy Act states:

**90** A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

It is my decision therefore that I will not consider the evidence supplied by the landlord.

#### Issue(s) to be Decided

The issues are whether or not to cancel or uphold the notices to end tenancy that had been given to these two tenants.

#### Background and Evidence

On April 28, 2017 the landlord personally served each tenant with a two month Notice to End Tenancy for landlord use stating the following reasons:

- The landlord has all the 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 advocate for the tenants has argued that the Notice to End Tenancy that was issued to the tenant in unit number 2 is invalid because the landlord failed to sign or date that notice as required under section 52 of the Residential Tenancy Act. The advocate is therefore requesting that that Notice to End Tenancy be canceled, as it is not in the required form.

The advocate for the tenants has also argued that they were given no information about the extent of the renovations being done to unit number 1, and therefore it is not clear whether vacant possession of this rental unit is required, or whether the renovations could be done with the tenant in place.

The advocate for the tenants further argued that they have no evidence of any permits or approvals being put in place as required before giving a Notice to End Tenancy under this section.

The landlords testified that, at this point, no approvals or permits are required to begin the process, however approvals and permits will be required for electrical and plumbing, but those will not be required for some time and since they are only valid for 30 days it is premature to take out any electrical or plumbing permits.

The landlords further testified that this is going to be a major construction project involving digging up one side of the building to deal with foundation issues, the units are all going to be completely gutted down to the studs, and all windows and doors are going to be replaced, and it would be impossible for the tenants to live in the rental unit over the long period of time required to do this renovation, as there would be no water or electricity.

The landlords are therefore request that the Notice's to End Tenancy be upheld.

### Analysis

It is my finding that the Notice to End Tenancy issued to the tenant in unit number two has a fatal flaw as section 52 of the Residential Tenancy Act does require that Notices to End Tenancy be both signed and dated and in this case the landlord has failed to do either.

Section 52(a) of the Residential Tenancy Act reads as follows:

**52** In order to be effective, a notice to end a tenancy must be in writing and **must (my emphasis)**

(a) be signed and dated by the landlord or tenant giving the notice,

Clearly, for this notice to be effective it was required to be signed and dated, as the act states must, and therefore, pursuant to section 62 of the Residential Tenancy Act, it is my decision that the Notice to End Tenancy served on the tenant in unit number two is hereby canceled and this tenancy continues.

With regards to the notice served on the tenant in unit number one, it is also my decision, pursuant to section 62 of the Residential Tenancy Act, that I will cancel this

Notice to End Tenancy because the landlords have not met the burden of proving that permits and approvals are not required, before performing this extensive renovation.

The burden of proving the reasons for ending a tenancy lies with the landlord and in the absence of any evidence from the landlord, other than their verbal testimony that permits are not required; it is my finding that the landlords have not met the burden of proving that they have met all the requirements for ending the tenancy under this section.

### Conclusion

It is my decision that the Notices to End Tenancy for unit one and unit two are hereby both canceled and these tenancies continue.

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 26, 2017

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Residential Tenancy Branch