



# 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 hearing was convened in response to an application by the tenant filed on August 09, 2017, to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated July 29, 2017 with an effective date of September 30, 2017.

Both parties attended the hearing. The tenant was aided by legal advocate. The parties were given opportunity to resolve their dispute to mutual satisfaction, to no avail. The parties acknowledged exchanging all evidence as received by this proceeding. Both parties were given opportunity to present all *relevant* evidence and to provide testimony respecting the dispute and to make relevant prior submission to the hearing, present witnesses and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the Notice to End tenancy valid?

Should the Notice to End dated July 29, 2017 be set aside and if not is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The parties both submitted a copy of the 2 Month Notice to End at issue and served the tenant for the reason afforded the landlord by Section 49(6)(b) of the Act;

**Landlord's notice: landlord's use of property**

**49** (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:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued as prescribed in accordance with the Act. The tenant originally submitted they disagreed the landlord's stated renovations/repairs necessitate ending the tenancy. However, during the hearing they questioned the landlord's good faith intention to do the renovations or repairs as stated in their Notice to End. Effectively the tenant argues the landlord did not issue their Notice in *good faith* as required by the Act.

The landlord was forthright in their testimony as to the need of the scope of work presented and as to their intention to renovate and repair the rental unit. The landlord and tenant discussed that 3 months before issuing the current Notice to End the landlord had given the tenant a similar Notice which in a previous hearing in June 2017 had been found deficient and thus dismissed. Therefore the landlord issued a new 2 Month Notice to End addressing the referenced deficiency.

The landlord provided a witness whom, in their capacity as the landlord's contractor, will be tasked with doing the scope of the work. By their witness the landlord provided details of the required work to address the scope of the intended renovations and repairs, which they categorized as upgrading the 75 year old rental unit. The landlord testified that the scope of the work will require varying number of several months to complete and cannot be done or completed while the rental unit is occupied. The tenant did not dispute the need or validity of the described work.

*The landlord provided the aforementioned witness.*

The hearing heard from the landlord's intended contractor, DE, in respect to the planned renovations. Under affirmation the witness testified that the rental unit requires major updating as it has deteriorated over its 75 years. The witness testified that the rental unit requires a thorough renovation and upgrades to the exterior and interior including the jacking (lifting) and leveling of the rental unit structure, removal and replacement of drywall, insulation, reframing outside walls, removal and replacement of windows and doors, new subflooring and flooring, new electrical wiring, electrical panel upgrades and new plumbing with

appropriate shut offs for added assurance. The witness also testified that upgrades to the kitchen, trim, paint and décor will be performed. The witness testified that they will eventually require permits to address portions of the work, however none are currently required.

In their written submissions of evidence the landlord provided, *“At this time no permits are required to begin the project. Once work begins; when a permit is required; it will be obtained for that part of the project”* – as written. The landlord also provided another document in which they state, *“at this time no permits are required to be obtained. Once electrical work begins, a permit will be obtained for that scope of the project. As permits are only valid for 30 days, the owners will not be seeking to obtain that permit until needed during the construction, which will be after 30 days of vacancy”*. – as written. Effectively the landlord states that any required permits, being time sensitive and of limited validity for solely 30 days, have not been obtained.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason(s), in accordance with the provisions of the Act.

On preponderance of evidence I find the landlord has aptly supported that the residential property necessitates performance of the scope of work as portrayed by them and their witness; and, that this is the landlord's guiding motive in pursuing an end to the tenancy, and in this respect I am satisfied as to the landlord's *good faith intention* required by the Act. I also find that to accomplish the scope of work intended by the landlord and portrayed in this matter requires the rental unit be vacated or vacant.

Regardless, I am further satisfied the landlord may be required to secure certain permissions (permits) required by local government law, principally for electrical, plumbing or other work, so as to conduct the stated purpose for issuing the Notice, but to date the landlord has not secured same. One reason given is that such permits are only valid for 30 days, which I find does not make sense; and, I have not been presented evidence from the landlord to support this claim. But moreover, I find that on preponderance of the evidence it is more likely than not that permits for the required work are or will be required by law, and the landlord does not have these as prescribed by Section 49(6) of the Act. I find that Section 49(6) operates to ensure that required

permits are 'in hand' before a tenant is appropriately notified the tenancy will end. Section 49(6) is clear that any necessary permits are a precondition to issuing the Notice to End. As a result, I find the landlord has not issued their Notice to End in accordance with the Act. Therefore, **I Order** that the Notice to End dated July 29, 2017, with an effective date of September 30, 2017 set aside or **cancelled**.

The landlord is at liberty to issue a *valid* Notice to End.

### **Conclusion**

The tenant's application is granted.

The landlord's Notice to End dated July 29, 2017 is **set aside and is of no effect**.

**This Decision is final and binding.**

*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: November 01, 2017

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Residential Tenancy Branch