



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL FF

### **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 of Property ("2 Month Notice"), pursuant to section 49, an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

RM ('landlord') testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice, dated October 23, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

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

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on September 20, 2014. Monthly rent is set at \$1,340.00, payable on the first day of each month. The tenant continues to reside in the rental unit, which is one out of 35 rent units in the building.

The landlord issued the 2 Month Notice on October 23, 2017 for the following reason:

- 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 provided the following background for why they had decided to issue the 2 Month Notice. The landlord's agent testified that the landlord intended to perform extensive renovations to the tenant's suite. The landlord submitted in evidence a letter dated August 15, 2017 containing the scope of work. The landlord submitted that these renovations required the tenant to completely vacate the unit for at least two months as there will be no electrical or plumbing services during this renovation project. Both parties agreed that the landlord had made attempts to settle the matter with the tenant, but the tenant did not accept the incentives offered by the landlord. The tenant was offered temporary housing at the same rent, but would have to agree to pay an increased monthly rental amount once the tenant moved back into her original unit.

The landlord's agent confirmed in the hearing that no permits had been obtained yet, but that this tenant was the last to move out. The landlord did not submit any permits in evidence.

The tenant testified that her unit was renovated approximately 3 to 4 years ago, when she had moved into the unit. She testified that these renovations included new appliances, carpet, windows, and a balcony door. The tenant questioned the necessity of the project as her unit was already upgraded, and that this was simply a tactic for the landlord to substantially increase the rent.

### **Analysis**

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to...renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant gave undisputed sworn testimony that the landlord had not obtained all the necessary permits for the renovations at the time the 2 Month Notice was issued to her. The reason provided on the 2 Month Notice states clearly that the landlord must have any required permits already in place. The tenant also questioned the landlord's intention as her unit was renovated only 3 to 4 years ago, with upgrades to the appliances, carpet, and windows.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

Although the landlord stated that they had issued the 2 Month Notice in order to renovate the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant raised the question of the landlord's true intentions to end the tenancy. She gave undisputed sworn testimony that the landlord had not obtained all the necessary permits for the renovations, and the landlord's agent did not dispute the fact that the tenant's unit was recently renovated with upgrades. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith, and that the landlord had all the necessary permits and approvals required by law to renovate the rental unit in a manner that requires the unit to be vacant. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The landlord did not provide any copies of permits for this renovation, nor did the landlord dispute the fact that the tenant's unit was already recently renovated. The landlord did not provide a reason for why her unit would

renovated again, other than the fact that she would be allowed to move back in at a higher rate of rent. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, require the tenant to permanently vacate her rental unit for the specific purpose of renovations.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated October 23, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find the tenant is entitled to recover the filing fee for this application.

### **Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated October 23, 2017 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 22, 2018

---

Residential Tenancy Branch