



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD  
[tenant name suppressed to protect privacy]

## **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*.

TD ('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 31, 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 July 15, 2011. Monthly rent is set at \$915.00, payable on the first day of each month. The tenant continues to reside in the rental unit.

The landlord issued the 2 Month Notice on October 31, 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, in addition to the other units in the building, but the tenant's unit was selected as one of the first as it was on the first floor. The landlord submitted in evidence the scope of work, which the landlord testified did not required permits. The landlord submitted that these renovations required the tenant to completely vacate the unit for at least 30 days.

The tenant testified that her unit was renovated approximately 8 years ago, which the landlord could not confirm. The tenant questioned the landlord's plan to renovate from the bottom floor upwards as his unit was above the ground floor, which contained two other units which were not selected before his to be renovated.

The tenant questioned the necessity of the project as his unit was already upgraded, and that this was simply a tactic for the landlord to end the tenancy with him. The tenant testified that he was previously served a 1 Month Notice, which he disputed. A hearing was held on October 25, 2017, and the Arbitrator granted the tenant's application to cancel the 1 Month Notice. The tenant testified that he was served with a new 1 Month Notice after the decision was made by the Arbitrator, but the landlord had withdrawn the 1 Month Notice as he realized it was not valid. The landlord then served the 2 Month Notice on October 31, 2017, less than a week later.

### **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 questioned the landlord's intention as his unit was renovated in 2011. The landlord was unable to confirm or dispute this. The tenant also questioned the landlord's intentions in serving the 2 Month Notice as the landlord had attempted to end the tenancy on the basis of a 1 Month Notice, but was unsuccessful in doing so. The 2 Month Notice was served to the tenant

less than a week after the Arbitrator had allowed the tenant's application to cancel the 1 Month Notice.

*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 landlord's agent did not dispute the fact that the tenant's unit was recently renovated with upgrades. It was also undisputed that the landlord's 1 Month Notice was cancelled by an Arbitrator a few days before the 2 Month Notice was issued to the tenant. 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 dispute the fact that the tenant's unit was already renovated. The landlord did not provide a reason for why this unit would be renovated again, other than the fact that the tenant's unit was on the lower floor, and the landlord's plan was to renovate all the units from the bottom up. 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 his rental unit for the specific purpose of renovations.

The tenant also testified that the landlord had made several attempts to end this tenancy, and was attempting every avenue to achieve this. In the previous decision dated October 26, 2017 the landlord expressed concern over the tenant's behaviour, which included alleged illegal activity, and the 1 Month Notice was issued for this reason as well as for the fact that the landlord felt the tenant jeopardized the health and safety of other occupants or the landlord.

Section 49(6) does not provide for unwelcome behavior by the tenant as a reason to end the tenancy by way of a 2 Month Notice.

I find that the tenant has raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated October 31, 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 31, 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 25, 2018

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Residential Tenancy Branch