



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL FF

### **Introduction:**

Both parties attended the hearing and gave sworn or affirmed testimony. I find that the tenant was served with a Two Month Notice to End Tenancy dated September 22, 2017 to be effective November 30, 2017 in his door mail slot. The landlord agreed he received the Application for Dispute Resolution personally. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for an order to set aside the Two Month Notice to End tenancy.

### **Issues:**

Is the landlord acting in good faith? Does the rental unit need to be vacant in order for the landlord to do renovations?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and make submissions. It is undisputed that the tenancy commenced January 1, 2016, rent is \$900 a month and a security deposit of \$450 was paid. The tenant, in her application, had asked for an extension of time to file the application. However I find she filed it within the 15 days allowed under section 49 (on November 7, 2017) so does not require an extension.

The landlord stated the reason for ending the tenancy on the Notice is that 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 tenant alleges the landlord is not acting in good faith for he issued the Notice right after she had a dispute with him concerning the hydro bill and after issuing the Notice, he showed it to a lady who was interested in renting it. The landlord said he has all the contractors lined up to do an extensive renovation including total removal of plumbing in the bathroom and removal of cupboards and a wall in the kitchen. He also has to address a leak problem so will be removing some ceilings as well. He estimated it would take three to four weeks. He said the lady who was interested in renting was living elsewhere and was prepared to wait until after the renovation.

When I queried the tenant as to whether she would prefer to move out temporarily for a month to allow the landlord to do the renovation, she said she would prefer to settle the matter. If she had known that option earlier, she would have relocated temporarily but now she has found

other housing. After further discussion, the parties freely and voluntarily decided to settle on the following terms and conditions:

**Settlement Agreement:**

- 1. The tenant will vacate on March 1, 2018 and the landlord will receive an Order of Possession for that date.**
- 2. The tenant will receive free rent for February 2018 pursuant to the section 49 Notice to End Tenancy which she received.**

The landlord queried when a section 49 Notice to do renovations would likely result in ending the tenancy. I direct him to two cases relevant to the point *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). Basically the Supreme Court cases have found that if a tenant can continue to live in the premises (even with some discomfort) during the renovation or is willing to move out for a short time, the tenancy should not be ended.

**Analysis:**

Pursuant to the above noted settlement agreement, I find the tenant entitled to one month's free rent in February 2018. I find the landlord entitled to an Order of Possession effective March 1, 2018 as agreed by both parties.

**Conclusion:**

An Order of Possession is issued effective March 1, 2018 as agreed by the parties. I find the tenant entitled to recover her filing fee pursuant to section 72 of the Act.

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 31, 2018

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Residential Tenancy Branch