



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, FF

### Introduction

This hearing dealt with a tenant's application for a Monetary Order for compensation payable to tenants where a landlord does not use the rental unit for the purpose stated on a *2 Month Notice to End tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, in completing their Application for Dispute Resolution the tenants had indicated the dispute code that applies where a tenant seeks to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property*. I determined that the tenants were served with a 2 Month Notice in January 2017 and the tenants moved out of the rental unit pursuant to the undisputed notice. The time limit to dispute a 2 Month Notice has long since passed; however, the tenants' are seeking compensation in relation to a 2 Month Notice. Therefore, I considered this dispute code to have been entered in error and I amended the application accordingly.

### Issue(s) to be Decided

Are the tenants entitled to additional compensation because the landlords did not use the rental unit for the purpose stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*, as provided under section 51(2) of the Act?

### Background and Evidence

The tenancy started in June 2012. The monthly rent was set at \$2,400.00 payable on the first day of every month. The monthly rent was increased once during the tenancy to \$2,465.00 starting on August 1, 2016. The monthly rent included utilities. The rental unit was located in a house and there was a basement suite that was also tenanted.

The tenants were served with a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") dated January 26, 2017 with a stated effective date of March 31, 2017. The landlords indicated the reason for ending the tenancy was "*the landlord has all 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 tenants did not file to dispute the 2 Month Notice. The tenants proceeded to secure new living accommodation, gave the landlords 10 days of notice and vacated the rental unit in mid-February 2017.

I heard that the tenants in the basement suite were also served with a 2 Month Notice but the reason given on that 2 Month Notice was so that the landlords could occupy the basement suite.

The parties confirmed that the tenants received the compensation payable to tenants in receipt of a 2 Month Notice and that the security deposit and pet damage deposit were disposed of satisfactorily.

The tenants are of the position that they are entitled to additional compensation payable under section 51(2) of the Act. The tenants' basis for this claim was that the landlords did not obtain permits for renovations before issuing the 2 Month Notice and the landlords were apparently not acting in good faith when they served the tenants with the 2 Month Notice. The tenants acknowledged that they did not make any enquiries about permits upon receiving the 2 Month Notice. The tenants explained that there had been contractors in the rental unit inspecting it and measuring it in the months prior to the end of their tenancy and the landlord had described to them the major renovations that were planned for the property. However, after the tenancy ended the tenants made enquiries with the City and determined the landlords, or the landlords' contractors, obtained permits after their tenancy ended, which means the landlords issued a 2 Month Notice prematurely. The tenants stated that they incurred greater losses financially and greater time pressures by having to move in February 2017 or March 2017 rather than wait until after the school year to end. Both of the tenants work for post-secondary institutions and would have had more availability after April 2017.

The landlords stated that they had been residing in a rented accommodation during the tenancy. The female landlord suffered the loss of her arm in November 2016 and then the rent on their rented accommodation was set to increase. The landlords decided that they would move back into their property but that the rental unit would be renovated first. The landlords testified that they issued 2 Month Notices to the tenants and the basement suite tenants to facilitate a renovation of the subject rental unit while they resided in the basement suite. The landlords confirmed that they moved into the basement suite and continue to occupy the basement suite as the renovations are still underway in the rental unit.

As for the lack of permits prior to issuing the 2 Month Notice, the landlords explained that they had obtained quotes from a contractor(s) during the tenancy but the landlords decided to undertake a less significant renovation and the male landlord would do the work himself. When the 2 Month Notice was given, the landlord had planned to demolish and install a new kitchen, including knobs and handles that would make it more accessible for the female landlord, and install new door handles in the unit. The landlords were of the position that this type of work did not require permits.

The landlords testified that they had also planned to commence demolition of the kitchen on April 1, 2017 since the tenants had until March 31, 2017 to vacate. The tenants moved out earlier than anticipated and the landlords were out of town so the landlord's daughter and family moved in for 1.5 months. The landlord commenced the demolition of the old kitchen on or about April 1, 2017. When the landlord demolished the old kitchen the landlords discovered the house had "Poly-B" piping. I heard that "Poly-B" piping has been found to be problematic and that insurance policies may not cover leaks from Poly-B piping. Once the landlords discovered the Poly-B piping they determined it appropriate to increase the scale of the renovation to include replacement of the piping so they hired a contractor. Since the landlords were hiring a contractor, the landlords also proceeded to make other renovations including an ensuite bathroom and other exterior structural changes. The landlords also stated that the subject property is very old, built in 1908, and that until walls are opened up it is difficult to anticipate all of the

work that is required. The contractor and/or the contractor's sub-trades applied for necessary permits with the City.

The tenants pointed out that the landlords had purchased a built in dishwasher on April 1, 2017, which is prior to the issuance of a plumbing permit being obtained, and installation of a built-in dishwasher would require a permit from the City. The landlord responded by stating he planned on installing the dishwasher without a permit and questioned whether a permit is required since he has installed dishwashers before and it is a relatively simple alteration to the plumbing.

The tenants provided a copy of their 2 Month Notice; Notice of Rent Increase; two Notices of Entry that were given in December 2016 for the purpose of inspecting the rental unit for upcoming renovations; documents demonstrating when permits are required by the City; and, the permits that had been obtained for the property.

I was provided a copy of a Development and Building permit issued by the City on April 27, 2017 to a contractor for the following things at the residential property: adding a bathroom upstairs, new exterior stairs and landing, exterior and interior alterations with respect to adding a Juliette balcony; reconfiguring layout of master bedroom; adding laundry closet; move closet wall; and, move shower stall in main bathroom.

I was provided a copy of a plumbing permit issued to a plumbing contractor on August 24, 2017 for installation of 10 plumbing fixtures at the residential property, including: two water closets; two wash basins; one bathtub; two showers; one sink; and, one dishwasher.

I was also provided a copy of a letter issued to the tenant by the City indicating a contractor inquiry was made for the property in February 2017 but no other details were available without a Freedom of Information Request. The tenants applied make such a request but the results have not yet been received. The landlord could not recall with certainty as to what this inquiry pertained to but stated it could have been him making an enquiry to determine if the property had a buried oil tank.

The landlords provided photographs of piping found at the property and information concerning Poly-B piping. The landlords also provided information concerning permit requirements and proof of purchasing appliances on April 1, 2017. The landlord also provided a copy of his vehicle registration to show that the landlord's address of residence is listed as being at the residential property when his insurance was renewed on April 22, 2017.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

When a landlord ends the tenancy for landlord's use of property the landlord is bound to use the rental unit for the purpose stated on the 2 Month Notice. Otherwise, the landlord must pay the tenant additional compensation equivalent to two month's rent, as provided under section 51(2) of the Act. This compensation is payable in addition to the compensation paid or payable under section 51(1) which the tenants have already received from the landlords.

Section 51(2) provides:

- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord...must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenants' primary argument was that permits had not been obtained prior to issuance of the 2 Month Notice and the landlords' good faith intention in ending the tenancy. I find these arguments are not overly relevant to the matter before me to decide. The landlords' good faith intention and the need for permits and/or the existence of permits are relevant matters to determine where a tenant disputes a 2 Month Notice issued for the reason of demolishing a property or performing significant repairs/renovations. The tenants were at liberty to make enquiries with the City and file to dispute the 2 Month Notice within 15 days of receiving the 2 Month Notice but they did not take such action despite a tenant's right to dispute a 2 Month Notice clearly set out on the 2 Month Notice the tenants received. Had the tenants pursued that remedy it is possible the tenants may have succeeded in having the 2 Month Notice cancelled. However, they chose not to pursue that remedy and they accepted the 2 Month Notice.

Since the tenants accepted the 2 Month Notice and took action to move to new accommodation, the landlords are bound to fulfill the stated reason on the 2 Month Notice within certain time lines, as provided under section 51(2). I proceed to consider whether the landlords fulfilled the stated reason on the 2 Month Notice within the applicable time constraints imposed upon them.

The reason for ending the tenancy was that the landlords were going to demolish, renovate or repair the rental unit in a manner that required the rental unit to be vacant.

Based on the landlord's testimony as to the renovation activities, which were supported, at least in part, by the permits that have been presented to me, I find I am satisfied that the landlords undertook a significant renovation after the tenancy ended as it involved demolishing all or portions of the kitchen, the main bathroom, structural walls; completely renovating the main bathroom and kitchen; installation of a new bathroom where one did not exist before; moving of windows and walls; rebuilding stairs; among other things. I further accept that such a renovation requires vacant possession of the rental unit and the evidence before me is that the rental unit has remained vacant since the landlords have been residing in the basement suite during this process.

As for the timing of the renovation project, I heard that the demolition of the kitchen commenced on or about April 1, 2017 and I was presented documentary evidence that a development permit was obtained on April 27, 2017 for renovation project. Considering the tenancy was originally set to end on March 31, 2017 and the landlords had made plans anticipating possession would be returned to them by April 1, 2017, I find I am satisfied that the demolition and renovation commenced within a reasonable amount of time after the tenancy ended.

In light of the above, I find the landlords met their obligation to undergo significant renovations while the unit was vacant within a reasonable amount of time after the tenancy ended. Accordingly, I find the tenants are not entitled to further compensation under section 51(2) of the Act and I dismiss their claim.

Conclusion

The tenant's application for compensation under section 51(2) has been dismissed.

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: April 3, 2018

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Residential Tenancy Branch