



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants, a witness for the Tenants, and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

**Preliminary Matter #1**

Although both parties raised concerns about the manner in which they were served the evidence of the other party, ultimately both parties agreed that they received the documentary evidence of the other party well in advance of the hearing and with sufficient time to consider and respond to it. As a result, I have accepted the documentary evidence before me from both parties for consideration in this matter.

Issue(s) to be Decided

Are the Tenant's entitled to an order cancelling the Two Month Notice?

Are the Tenants entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenants are not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began in October of 2011 at a monthly rent amount of \$1,600.00. Although the parties disagreed about whether or not the tenancy was currently month-to-month or fixed term, they both agreed that it began as a fixed-term tenancy agreement and that several subsequent fixed-term tenancy agreements were signed. The parties also agreed that rent in the amount of \$2,150.00 is currently due on the first day of each month and that the Landlord holds an \$800.00 security deposit and a \$400.00 pet damage deposit, both of which were paid by the Tenants.

The parties agreed that the rental unit is a three story townhouse where the garage and the entryway make up the first floor, the living room, dining room kitchen, and a powder room make up the second floor, and three bedrooms, two bathrooms, and a laundry room make up the third floor. The Landlord submitted floor plans for the rental unit matching this testimony.

The Landlord testified that he intends to complete renovations and repairs in the rental unit that require vacant possession and as a result, a Two Month Notice was personally

served on the Tenants on January 24, 2018. The Tenants confirmed receipt of the Two Month Notice on this date.

The Two Month Notice in the documentary evidence before me, dated January 22, 2018, has an effective vacancy date of March 31, 2018, and states that the reason for ending the tenancy is because the landlord has all the 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 Landlord testified that he intends to complete extensive renovations and repairs to the rental unit which include removal and replacement of all flooring, drywall repair, painting of all walls and ceilings, repair of a damaged hose connection in the garage, removal and replacement of all appliances, repair and replacement of all light fixtures, removal of kitchen cupboards for painting, removal and replacement of all toilets and bathroom vanities, retiling in bathrooms, and the replacement of shower doors. In addition to this the Landlord stated that all floors will be sealed with a paint-like odour blocker which requires several coats and several days to dry between coats. The Landlord stated that this is necessary as the Tenants pets as well as the pets of previous occupants have defecated on the floors in the property causing permanent odours which may only be dealt with by removing the floors and sealing them with an odour blocker.

The Landlord stated that he does not require permits for the work and provided an e-mail from the city confirming that no permits are required. The Landlord stated that the work also does not require strata approval and provided an e-mail from the agent for the Strata confirming that approval is not required. The Landlord testified that he has hired a contractor to start the work effective April 1, 2018, and provided a copy of the contract. The Landlord also provided quotes for painting, and the cost of replacement fixtures, flooring, cabinetry, and appliances.

The Landlord argued that vacant possession of the rental unit is required for the renovations to be completed because due to the size of the unit and the lack of available space in the unit and the garage, it would not be possible for the Tenants to move their belongings around to accommodate the renovations as needed. Further to this, the Landlord stated that even if the renovations are completed floor by floor or section by section, there will be weeks at a time when the floors, or sections of the floor, will be wet and off limits due to the process of odour sealing. The Landlord testified that given the space layout, it will therefore be impossible for the Tenants to live in the rental unit while this is completed as they would be unable to get from one floor to the other.

The Tenants stated that they don't believe that the flooring needs to be changed and that they are willing to remove their vehicles from the garage for short periods of time to accommodate the storage of their belongings as necessary. The Tenants questioned the Landlords commitment to do the renovations as they stated he has been reluctant to complete repairs during their tenancy. The Tenants stated that one of the painters advised them that he regularly works around occupants and therefore they believe that vacant possession is not required. The Tenants also questioned why the Landlord hired a contractor to come in from another province and stated that they are willing to live through and accommodate the required renovations. Further to this the Tenants argued that the Landlord is simply trying to evict them as it is cheaper and easier for him to complete the renovations if the unit is vacant.

Both parties agreed that March rent has been paid and that as of the date of the hearing, the Tenants have not been provided any compensation pursuant to section 51(1) of the *Act*.

### Analysis

Section 49(6) of the *Act* states that 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Although the Tenants believe that the flooring does not need to be replaced, the *Act* does not require landlords to satisfy Tenants or the arbitrator that repairs or renovations are required. Further to this, I find that it is not up to the Tenants to decide whether or not repairs or renovations are required or necessary as they are not the owners of the property.

While the Tenants stated that vacant possession is not required, the only evidence they provided in support of this assertion is their own testimony that painters who attended the property for the purpose of providing quotes to the Landlord advised them that they regularly work around occupants. Although I agree that the painting of a rental unit does not normally require vacant possession, I note that painting of the property is only one component of the renovation to be completed. During the hearing the Tenants proposed that while the floors are being sealed for odour elimination, the Landlord could lay down wood or paper as a walkway which would allow them to access to the rest of the rental unit.

However, having reviewed the floor plans for the rental unit I do not agree. The Landlord testified that the odour blocking agent goes on like paint, requires several coats, and 3-4 days to dry between coats. As a result, the Landlord stated that any section covered in the odour blocking agent will be inaccessible for approximately 2 weeks. In my mind, you cannot lay paper or another substance over a wet surface for the purpose of allowing foot traffic as this will damage the applied agent and prevent proper drying. Given the above, there would therefore either be a period of two weeks where all floors were inaccessible or a series of two week periods where portions of the floors would be inaccessible. Due to the layout of the rental unit, I do not see any way in which the floor can be sealed either all at once, or in sections, without there being a period of at least two weeks in which the Tenants would be unable to move between the different floors of the rental unit. As the showers and bedrooms are on the top level, the kitchen and dining room are on the second level, and the entry way is on the first level, I see no way in which the Tenants could use the rental unit, in any meaningful way, during this time. As a result, I find that vacant possession is required, as a practical matter, in order for the floors to be sealed.

As the Landlord provided evidence from the strata and the city in which the rental unit is located that no permits or approvals are required, I am satisfied that the Landlord has all the necessary permits and approvals required by law to completed the renovations. Based on the above I am also satisfied that vacant possession of the rental unit is required in order for the renovations to be completed. Although the Tenant's questioned the Landlords intentions to complete the renovations, they did not provide any documentary evidence or call any witnesses in support of their argument that the Landlord does not intend to complete the renovations. On the other hand, the Landlord submitted significant documentary evidence, including quotes for fixtures, painters, and appliances and a signed contract for the work from a contractor. As a result, I find that the Landlord has satisfied me on a balance of probabilities that he intends in good faith to complete the renovations.

Based on the above, the Tenants Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. As the Tenants were not successful in their Application, I decline to grant them recovery of the filing fee.

I also find that the Two Month Notice issued by the Landlord complies with section 52 of the *Act*, as it is signed and dated by the Landlord, gives the address of the rental unit, stated the effective date of the notice and the reasons for ending the tenancy and is in the approved form. Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the effective date of the Two Month

Notice has passed, the Order of Possession will be effective two days after service of the order on the Tenants.

### Conclusion

The Tenants' Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: April 3, 2018

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Residential Tenancy Branch