



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNL FF

### **Introduction**

Both parties and witnesses attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated March 31, 2018 to be effective May 31, 2018 was served personally March 31, 2018. The effective date on the Notice is automatically corrected to May 30, 2018 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). There are only 30 days in May. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on the male landlord and by registered mail on the female landlord and the landlords agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that they have all the permits and approvals required by law to renovate or repair the unit in a manner that requires the unit to be vacant?

Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

## **Background and Evidence**

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 1, 2013, it is now a month to month tenancy, rent is \$1475 now a month and a security deposit of \$675 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

*The landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rented unit in a manner that requires the rental unit to be vacant.*

The landlord explained that the main bathroom is in great disrepair and she intends to remove the toilet, sinks and shower. She said there was also an ensuite with toilet and sink in the home and another toilet in the basement. She said she intended to remove and replace these fixtures as well and they will be all out within a day or two of starting. She said the home had to be vacant for there will be no bathrooms and when the walls are opened, there may be asbestos. She and her son intend to do the work themselves. She is tired of tenants and wants to sell the property. She sent a letter to the City on April 3, 2018 stating that she was going to remove and reinstall plumbing fixtures, there would be no change in the pipes and the locations would be the same. The City replied that there were no permits needed for this work as described.

The tenants said there were signs of mould in the ceiling of the bathroom since they moved in and there is no fan in it. They said they were told she was just doing the main bathroom and a toilet had been leaking there and was replaced and new linoleum put on the floor. The father of a tenant said it was suspicious that nine days after a previous hearing on a disputed rent increase, this Notice was served. On May 4, 2018, the landlord did an inspection for the first time in years and noted wallpaper was peeling. He said it seems the landlord wants to do cosmetic work, maybe to raise rent but this should not be a basis for eviction according to the Act and case law.

The landlord said she wants to sell and wants the place looking good. The tenant said they could find alternate accommodation for a week or so, especially in July 2018, when her children won't be there. The tenant pointed out that in the past, one of the toilets was gone for a couple of weeks and they had furnace problems and managed with electric heaters for a couple of weeks. They are prepared to accommodate the landlord to do her repairs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy two tests as set forth under the *Residential Tenancy Act*. Section 49 (6) (b) of the *Residential Tenancy Act* states that a landlord may end a tenancy in respect of a rental unit if:

- 1) The landlord has all the necessary permits and approvals required by law;
- 2) And intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Based on the testimony and documentary evidence the Landlord has not applied for permits for this property. I find, however the City has confirmed that the scope of the renovation work which is only replacing plumbing fixtures, toilets, sinks and bathtub does not require permits for that type of work.

The Tenant disputed the eviction notice and argued that they should not have to vacate the rental unit as the work is mainly cosmetic and they could live in the property while the work is carried out or vacate it for a short time if necessary.

The British Columbia Supreme Court addressed this issue in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257:

"[21] First, the renovations by their nature must be so extensive as to require that the unit be vacant in order for them to be carried out. In this sense, I use "vacant" to mean "empty". Thus, the arbitrator must determine whether "as a practical matter" the unit needs to be empty for the renovations to take place. In some cases, the renovations might be more easily or economically undertaken if the unit were empty, but they will not require, as a practical matter, that the unit be empty. That was the case in **Allman**. In other cases, renovations would only be possible if the unit was unfurnished and uninhabited.

[22] Second, it must be the case that the only manner in which to achieve the necessary vacancy, or emptiness, is by terminating the tenancy. I say this based upon the purpose of s. 49(6). The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out

renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.

Practically speaking, if the tenant is willing to empty the unit for the duration of the renovations, then an end to the tenancy is not required. It is irrational to think that s. 49(6) could be used by a landlord to evict tenants because a very brief period was required for a renovation in circumstances where the tenant agreed to vacate the premises for that period of time. It could not have been the intent of the legislature to provide such a “loophole” for landlords.”

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the scope of the work being planned, as described in this hearing, would not require the rental unit to be vacant. While I agree that it would be easier for the Landlord to fix up the unit for resale, I find there is no indication that this long term tenancy should have to end to accommodate a request simply to make the renovations less expensive or easier for a landlord. While both parties may be inconvenienced during the renovations or repairs, common law, as quoted above, supports that a tenancy does not have to end in those situations.

**Good Faith** - The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the “good faith” requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

When considering the good faith requirement I considered the recent events and the consistency of the evidence. There is an ongoing dispute concerning a rental increase which will be heard in June 2018, the landlord testified that the tenants did not keep the unit in good condition to make it easy to sell and she wanted to make it look good for sale. She also said at first it was the main bathroom she was renovating but then later said she would remove the fixtures of all the bathrooms. I find her testimony inconsistent and indicating an attempt to prove that the unit has to be vacant in order to do renovations.

I find the Landlord’s explanation of why they need to end this tenancy to be questionable when I consider the totality of the facts before me. Therefore, I accept the Tenant’s submission that the Landlord may have an ulterior motive which is driven by a

desire to sell or collect higher rent. Therefore, I find the Landlord has provided insufficient evidence to meet the test of good faith.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated March 31, 2018 is hereby set aside and cancelled. The tenancy is continued. I find the tenant entitled to their filing fee for this application.

**I HEREBY ORDER that the tenant may deduct \$100 from their rent to compensate them for the filing fee.**

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: May 16, 2018

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Residential Tenancy Branch