



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, ERP, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "4 Month Notice") pursuant to section 49;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order for the landlord to make emergency repairs to the rental unit?

### Background and Evidence

The parties testified that this tenancy began on August 20, 2011 on a fixed term until August 1, 2012 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,579.00 is payable on the first of each month. The tenant remitted \$738.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

#### *4 Month Notice*

The tenant acknowledged personal receipt of the landlord's 4 Month Notice dated May 28, 2018. The 4 Month Notice indicates that the landlord is ending the tenancy to perform renovations or repairs that are so extensive that the rental unit must be vacated. The 4 Month Notice also indicates that permits and approvals are not required by law to perform the work. The landlord testified that he spoke to the City of Burnaby and they advised him that because the proposed renovation does not alter the existing unit, permits are not required.

The landlord testified that the unit is over forty years old and has significant plumbing issues. He testified that the copper pipes in the upstairs bathroom began to leak into the kitchen approximately three years ago and despite the landlord's best effort to repair, the pipes continue to leak. The leaking pipes have led to mold growth in the two bedrooms and bathroom. The landlord had the mold painted in November of 2017; however the mold has resurfaced in the bathroom. The landlord testified that a renovation company attended the unit and provided an estimate in the amount of \$25,800.00. The landlord submitted a copy of the estimate as part of his evidence package. The landlord seeks to end the tenancy to replace all copper pipes, renovate the bathroom, remove the kitchen ceiling and replace with new ceiling, remove and repair molded drywall from the two bedrooms and bathroom, paint the entire unit, and replace the floor in the unit.

In reply, the tenant testified that the required repairs are minor and do not require vacate possession. He testified that the bedrooms are no longer showing signs of mold, and the bathroom leak into the kitchen is a very slow leak. While he confirms mold growth in the bathroom, he attributes this to an insufficient fan. The tenant and his witness testified that a renovation company did not attend the unit to assess for repairs. It is the tenant's position that the landlord seeks to end the tenancy in an effort to collect a higher rent.

### *Emergency Repairs*

The tenant seeks to have the bathroom leak into the kitchen repaired. In conjunction with this, the tenant seeks to have the hole which was made in the kitchen ceiling upon an earlier repair, be repaired.

### Analysis

#### *Four Month Notice*

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The burden of proving the reasons for ending a tenancy lies with the landlord. I find that the landlord has provided insufficient evidence to establish that permits and approvals are not required and that he truly intends to make these repairs or that such repairs would require vacant possession.

The landlord did not provide documentary evidence to substantiate his claim that permits and approvals are not required. The estimate the landlord provided is vague, it does not show an estimate for each repair, rather it provides one monetary amount of \$25,800.00. Further, the tenant and tenant's witness testified that the renovation company did not attend the unit to assess for repairs. I am not satisfied, based on the evidence submitted that vacant possession is required for the repairs described. Based on the above, I uphold the tenant's application to cancel the 4 Month Notice.

### *Emergency Repairs*

Section 33 of the *Act* describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of repairing:

- major leaks in pipes or the roof,
- damaged or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I find the repairs requested by the tenant are not emergency repairs as defined by the *Act*. For this reason, I dismiss this portion of the tenant's claim, without leave to reapply.

As the tenant was successful in this Application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the Application.

### Conclusion

The tenant's application to cancel the 4 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application to an order to the landlord to make emergency repairs to the rental unit is dismissed without leave to reapply.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover 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: July 27, 2018

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Residential Tenancy Branch