



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M MNRT OLC PSF RP RR

### 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 Landlord's Use of Property ("4 month notice") pursuant to section 49 of the *Act*;
- an order to reduce rent for repairs, services or facilities agreed upon but not provided;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law;
- repairs to be made to the unit, site or property;
- a return of funds for emergency repairs made during the tenancy; and
- an order directing the landlord to comply with the *Act*

The tenants, the landlord and the landlord's son who acted as his agent and interpreter attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenants confirmed receipt of the landlord's 4 Month Notice to End Tenancy after it was placed in their mailbox on August 8, 2018. Pursuant to section 89 of the *Act*, I find the tenants were duly served with the landlord's 4 Month Notice.

The tenants said they sent their evidentiary package to the landlord by way of Canada Post Registered Mail on October 2, 2018, while the application for dispute was sent on September 5, 2018. The landlord confirmed receipt of both packages and is found to have been duly served in accordance with sections 88 & 89 of the *Act*.

The landlord said his evidence was placed in the tenants' mailbox on October 5, 2018. The tenants said only one copy of evidence was provided to them, contrary to the rules

of procedure. Despite, this the tenants said they had sufficient time to review the documents, and I find pursuant to section 71(2)(c) of the *Act* that the tenants were sufficiently served with the landlord's evidentiary package.

### Issue(s) to be Decided

Can the tenants cancel the landlord's 4 month notice?

Should the landlord be directed to comply with the *Act*?

Are the tenants entitled to a reduction in rent?

Should the landlord be directed to make repairs to the rental unit?

Should the landlord be directed to provide services to the tenants?

### Background and Evidence

The tenants explained this tenancy began on December 15, 2016. Rent at the outset of the tenancy was \$1,480.00 and a security deposit of \$740.00 paid at the beginning of the tenancy continues to be held by the landlord.

On August 8, 2018 the landlord served the tenants with a 4 month notice to end tenancy. The reasons cited on the 4 month notice were listed as follows:

- *perform renovations or repairs that are so extensive that the rental unit must be vacant, and*
- *I have obtained all permits and approvals required by law to do this work.*

The landlord explained that he wished to make significant repairs to the rental unit which required the tenants to be vacant from the unit. Specifically, the landlord cited:

- i) Replacement of ceiling in bathroom
- ii) Addition of a "water full" alarm system for the sump
- iii) Addition of an air vent to the drain pipe under the sink
- iv) Replacement of all windows

- v) Installation of a vent hood fan
- vi) Renovation to the bathroom
- vii) Upgrade of wireless smoke alarm
- viii) Fix part of damaged wall coating and insulation
- ix) Repaint of rental unit

As part of his evidentiary package the landlord provided three quotations for labour by different contractors. Two of the quotations provided by contractors note, "suite will be required to be vacant" and "Contractor require the suite must be vacant before start to work." The landlord explained he wished these repairs to be made as soon as was allowable under the *Act* and he intended for the tenants to return to the rental unit under a new tenancy agreement following the completion of the repairs. The landlord said these repairs were scheduled to take "2 months conservatively" while two of the quotations provided by the landlord said, "within 60 days" and "within two months".

The tenants disputed that any repairs to the rental unit were required other than a repair to the heating vents and an installation of vents in the bathroom. The tenants argued the other items cited by the landlord did not require them to vacate the rental property, or had already been fixed. The tenants said, "everything is in good working order" and explained the suite only had a few "minor" issues to address. The tenants provided a comprehensive explanation of each item cited by the landlord as needing repair. Specifically, the tenants said; the bathroom ceiling fan had been fixed; that the alarm system for the sump was unnecessary as the flooding issues had been repaired; that an air vent for a drain pipe was located in the laundry room away from their suite; that the windows "had nothing to do with our suite"; that the vent hood had been repaired that the smoke alarm was new as of January 2017 and that only minor painting touch ups were required.

In addition to their application cancelling the landlord's 4 month notice, the tenants have applied for a rent reduction of \$200.00 per month due to what they described as "excessive noise" emanating from the children who lived upstairs and \$150.00 for expenses related to a sidewalk the tenants repaired. The tenants said the landlord had contravened the terms of their tenancy agreement and allowed an unreasonable number of persons to occupy the upper floor unit. The tenants said this created an "excessive" amount of noise which led to an inability to enjoy the premises in peace. The tenants additionally sought an order directing the landlord to comply with the *Act* and to provide them with quiet enjoyment in accordance with the *Act*. The tenants

alleged their privacy had been invaded by the upper floor tenants through a concerted effort on their part, along with the landlord to displace them. In addition, the tenants said the landlord had allowed an unreasonable amount of garbage to accumulate in the backyard.

The landlord argued this matter had already been considered at a past arbitration and asked that the tenant's application be dismissed. The landlord alleged the tenants had submitted evidence from previous hearings and was attempting to have matters reheard. The landlord said he had not previously heard of the tenants' issues related to the repairs they requested and said the tenants had not identified any issues related to the sidewalk. The landlord explained it was the tenants' duty to maintain the yard and any junk that may be present in the yard was the tenants' creation and responsibility. The landlord described the backyard as a "common area" that was to be shared by all tenants on the property.

#### Analysis – Notice to End Tenancy

Section 49(6) of the *Act* describes the circumstances that must be present when a landlord is to end a tenancy to renovate and repair a rental unit. It reads –

*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 do any of the following:*

*(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

The burden of proof for me to issue an order of possession for a 4 Month Notice is placed on a landlord as they must demonstrate why a tenant would be required to vacate the unit during the course of the renovations. In addition, these repairs and renovations must be so extensive that the rental unit must be vacant in order for them to be carried out and the only manner to achieve that vacancy is by ending the tenancy. The *Residential Tenancy* website notes, "Cosmetic renovations and repairs, like painting, changing light fixtures, replacing flooring and changing kitchen cabinets **are not** major renovations or repairs." It continues by stating, "Major renovations or repairs *could* include: rewiring the rental unit, making major alterations to the plumbing or reconfiguring the rental unit in a way that requires walls to be removed."

I find the renovations proposed by the landlord do not meet the description of "major renovations" nor do they prevent the tenants from moving back into the unit following their completion. I find the repairs are not necessary to make the suite habitable or for

safety reasons, and are merely cosmetic. For these reasons, I dismiss the landlord's 4 Month Notice.

#### Analysis - Remainder of Tenant's Application

In addition to an order seeking a cancellation of a landlord's 4 Month Notice, the tenants have applied for orders directing the landlord to comply with the *Act*, specifically section 28, along with a reduction of rent of \$200.00 per month, a return of \$150.00 for repairs to a sidewalk on the property, a repair to the heating vent and removal of garbage in the backyard.

The legal principle of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. I find the tenants arguments related to complaints regarding a reduction in rent due to the landlord's non-compliance with the *Act* relates closely to their previous arbitration from August 2018. In that application the tenants sought a monetary award because of the landlord's alleged non-compliance with the terms of their tenancy agreement. This application was dismissed.

I therefore find that this current application for a rental reduction is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. As mentioned above, the tenants have also applied for a return of \$150.00 for repairs to a sidewalk, an order directing the landlord to provide them with quiet enjoyment of the rental unit, for the landlord to repair the bathroom vent, fix the heating vents and remove debris from the back yard.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their claim for a monetary award.

While photos of the broken sidewalk were uploaded with the tenants' evidentiary package, I find no receipts or invoices related to purchases associated with repairing the sidewalk. I find the tenants have failed to provide evidence to verify the actual monetary amount of loss or damage and therefore dismiss this portion of their application.

Section 32(1) of the *Act* states, "A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." The tenants seek an order directing the landlord to repair the heating vents and a bathroom vent. I find sufficient evidence was presented by the tenants that the property was in a poor state and required some minor repairs to the property; however, I accept the landlord's testimony that the tenants concerns have been addressed in an efficient manner. I decline to order the landlord to make repairs as I find the landlord has been receptive to the tenants concerns as they relate to issues on the premises.

The tenants seek an order directing the landlord to remove debris from their backyard. A review of the tenancy agreement submitted by the tenants shows at point 8 that the tenants agreed to "keep the front and back yard tidy and clean." I find the duty to maintain the backyard is therefore within the tenants' responsibility.

### Conclusion

The landlord's 4 Month Notice to End Tenancy is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants' application for an order to reduce rent for repairs, services or facilities agreed upon but not provided is dismissed.

The tenants' application for an order for the landlord to provide services or facilities required by the tenancy agreement or law is dismissed.

The tenants' application for repairs to be made to the unit, site or property is dismissed.

The tenants' application for a return of funds for emergency repairs made during the tenancy is dismissed.

The tenants' application for an order directing the landlord to comply with the *Act* is 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: October 16, 2018

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Residential Tenancy Branch