



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL- 4M FFT RP

### **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 ("2 Month Notice"), pursuant to section 49;
- an order to the landlord to make 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.

PW ('landlord') testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 4 Month Notice, which was posted on his door on June 30, 2018, I find that this document was served to the tenant in accordance with section 88 of the *Act*.

### **Issues(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 perform repairs?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2011. Monthly rent is currently set at \$874.00, payable on the first day of each month. The landlord collected, and still holds, a security deposit in the amount of \$400.00. The tenant continues to reside in the rental unit.

The landlord issued the 4 Month Notice on June 30, 2018 for the following reason:

- convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

The landlord provided the following background for why they had decided to issue the 4 Month Notice. The landlord testified that the rental unit has a history of problems, including flooding and various leaks. The landlord testified that they have tried to maintain the rental unit, but due to the number of incidents, the landlord has determined that further investigation is required to diagnose and repair the problems. The landlord testified that this would require the unit to be vacant. After the repairs, the landlord plans to convert the rental unit for use as a manager's office. The landlord testified that they have not obtained any permits as they are still in the process of investigating the cause of the leaks and flooding. The landlord testified that they have had to repeatedly compensate the tenant for the various issues arising out of this rental unit. The landlord also testified that the tenant was offered other accommodation, but the tenant refused as they did not meet the tenant's requirements.

The tenant testified that the landlord's motivation to end this tenancy is due to the growing resentment towards him for raising various issues that has resulted in the landlord's increasing costs to address the problems. The tenant also believes that the landlord's plan is to evict the tenant in order to raise the rent. The tenant testified that he was offered an alternate apartment to rent, but the rent was three times the amount of rent he is paying, which is beyond his budget.

### **Analysis**

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant testified that the landlord's true motive is to end this tenancy as the landlord has tired of the tenant's multiple requests for repairs and maintenance of the rental unit, which has resulted in growing resentment towards the tenant.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."*

Although the landlord stated that they had issued the 4 Month Notice in order to convert it to a manager's office, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant gave undisputed sworn testimony that the landlord is concerned about the number of issues the tenant has raised about the rental unit. The landlord expressed concern about the number of issues that needed to be addressed. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they issued the 4 Month Notice in good faith. Although the landlord testified that they required the unit to be vacant to investigate the issues, I am not satisfied that the landlord has provided sufficient evidence to support that the ending this tenancy permanently is necessary for investigative purposes. Furthermore, I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The landlord did not dispute the fact that the tenant has made multiple requests for repairs and compensation

related to this rental unit. The landlord did not provide a reason for why another rental unit can be used as the manager's office. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, require the tenant to permanently vacate his rental unit for the specific purpose of converting it to a manager or caretaker's office.

Accordingly, I allow the tenant's application to cancel the 4 Month Notice. The landlord's 4 Month Notice, dated June 30, 2018 is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant filed an application for repairs to be completed by the landlord. The landlord testified in the hearing that they have attempted to address the tenant's concerns to the best of their ability considering the age of the building, and their level of access to investigate the rental unit. I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to maintain or repair the property as required by the *Act*, as summarized below:

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

As I am not satisfied at this time that the landlord has failed to comply with section 32(1) of the *Act*, I dismiss the tenant's application for repairs with leave to reapply.

I find the tenant is entitled to recover the filing fee for this application.

### **Conclusion**

The tenant's application to cancel the landlord's 4 Month Notice is allowed. The landlord's 4 Month Notice, dated June 30, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for the recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for repairs is dismissed with leave to reapply.

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: September 26, 2018

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Residential Tenancy Branch