



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution the (“Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the “Four Month Notice”), and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement.

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 agent for the Landlord (the “Agent”), and the Tenant, both 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 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

Although the Agent acknowledged receipt of the Application and Notice of Hearing, she testified that no other documentary evidence was received by her or the Landlord from the Tenant in relation to this hearing. The Tenant provided me with copies of four previous decisions from the Residential Tenancy Branch (the “Branch”) in relation to her tenancy; however, she acknowledged in the hearing that these decisions were not

served on the Landlord in relation to this hearing as she believed the Landlord already had copies.

The Agent testified that although she is aware of the previous arbitrations between the parties and that the Landlord has copies of the previous decisions relating to this tenancy, both she and the Landlord were unaware of the fact that the Tenant intended to rely on any previous decisions in this hearing. As a result, the Agent argued that she cannot possibly speak to them as she was unaware they would be used as evidence in this hearing and has not seen them.

Despite the objections raised by the Agent, I find that the previous decisions rendered by the Branch in relation to this tenancy form part of the Branch record in relation to this tenancy. Further to this, the Agent acknowledged that she is aware of the parties' previous hearings with the Branch and that although she herself has not read all of the decisions, the Landlord has received them. As the decisions form part of the Branch record and have been received by the Respondent, I find no prejudice in their acceptance as evidence in the hearing. As a result, I will consider the previous decisions rendered by the Branch in relation to this tenancy should the parties provide any evidence or testimony in relation to them .

#### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Four Month Notice and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

If the Tenant is unsuccessful in cancelling the Four 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 a tenancy is in place and that rent is due on the first day of each month. The Tenant testified that the Landlord has unsuccessfully attempted to end the tenancy on two previous occasions in the past one and a half years and that she has had ongoing issues with the Landlord since she began requesting repairs to the rental unit. The Tenant stated that she has had four previous hearings with the Branch in relation to this tenancy, her requests for repairs, and the Landlord's attempts to end the tenancy, all but one of which were resolved in her favor. The Tenant stated that she received the Four Month Notice, which is the third notice to end tenancy in the last year

and a half, from her door on July 9, 2018, which is just over four months after the date the last notice to end tenancy was served on her for Landlord's use of property.

The Tenant stated that the first Two Month Notice, which was served on her in early 2017, was cancelled as the Landlord intended to move their grandson into the rental unit and the arbitrator determined that a grandchild does not meet the definition of a close family member under section 49 of the *Act*. The Tenant stated that the second Two Month Notice which was served on her on February 23, 2018, was cancelled as the arbitrator determined the notice was not served in good faith based on the previous history of disputes between the parties. As a result, the Tenant argued that the current Four Month Notice has also been served in bad faith. Further to this, the Tenant stated her belief that the Landlord will not convert the rental unit back to a garage as stated in the Four Month Notice.

The Four Month Notice in the documentary evidence before me, dated July 9, 2018, has an effective vacancy date of November 15, 2018, and states that the reason for ending the tenancy is because the Landlord intends to demolish the rental unit and convert it to non-residential use. The Four Month Notice states that no permits are required by law to complete the work and that the Landlord intends to convert the rental unit back into a garage for personal storage.

The Agent for the Landlord acknowledged that there have been several past hearings in relation to this tenancy but stated that they are unrelated to the reason for which the Four Month Notice has been served. The Agent stated that the Landlord and the Landlord's spouse are elderly, their health is declining, and they can no longer effectively manage the obligations associated with being landlords. As a result, they are looking to convert the rental unit, which forms part of their attached garage, back into garage space for vehicle and other storage as well as workshop space for tinkering. The Agent stated that no permits are required for the work as they are simply removing a non-structural wall that separates the rental unit from the rest of the garage, as well as kitchen appliances and cabinetry.

While the parties disagreed about whether all of the repairs ordered by the Branch had been completed, they did agree that the vast majority, if not all of the repairs, were completed and that all ordered compensation had been provided to the Tenant. As a result, the Agent argued that the Landlord does not have an ulterior motive for ending the tenancy, such as avoiding the repair orders or the need to pay compensation, and that the Four Month Notice has been issued in good faith as the Landlord truly intends to convert the rental unit for non-residential use. Further to this, the Agent

acknowledged that she and the Landlord are aware of section 51(2) of the *Act* and are not concerned as the Landlord has no intention of using the rental unit for any purpose other than that stated on the Four Month Notice.

### Analysis

I acknowledge that the parties have a history of disputes and that an arbitrator in a previous hearing, regarding a different notice to end tenancy, found that particular notice was not served by the Landlord in good faith. However, section 64 of the *Act* states that the director must make each decision or order on the merits of the case as disclosed by the evidence before them and is not bound to follow other decisions. I do not find the fact that an arbitrator found a previous notice to end tenancy was served in bad faith means that any subsequent notices to end tenancy served would also be, as a matter of course, served in bad faith as doing so would unreasonably restrict the Landlord's rights under the *Act*. As a result, I have assessed the case before me thoughtfully and independently based on the entirety of the documentary evidence and testimony before me for consideration.

Although the Tenant argued that the problems in the tenancy began when she first requested repairs and that the Four Month Notice was not issued in good faith based on the previous history of disputes, both parties agreed that the majority, if not all of the repairs previously sought by the Tenant through the dispute resolution process, have been completed and that all required compensation has been provided. As a result, I give little weight to the Tenant's argument that the Landlord has served the Four Month Notice based on the history of disputes relating to repairs or in an effort to avoid compliance with previous repair or payment orders from the Branch.

Although the Tenant also stated that she did not believe that the Landlord intends to use the rental unit for the stated purpose given on the Four Month Notice, she did not provide any documentary or other corroborative evidence in support of this testimony. As a result, I find this testimony to be speculative in nature and give it no weight.

The Tenant further argued that the Four Month Notice has not been issued in good faith as the Landlord ulterior motives for ending the tenancy and pointed to a previous decision where an arbitrator in that case found the notice was not served in good faith based on the history of disputes between the parties. The Agent acknowledged in the hearing that there was a history of disputes between the parties and stated that the Landlord accepted and respected the previous arbitrators decisions. Despite the foregoing, the Agent stated that the Landlord and her spouse are elderly and that their

health continues to deteriorate. As a result, she stated that they can no longer manage the responsibilities associated with being landlords and simply wish to convert the rental unit to non-residential use and turn it back into a garage.

As there is no evidence to the contrary, I accept that no permits are required to convert the rental unit back into a non-residential garage space.

While I appreciate the Tenant's position, section 49(6)(f) allows landlords to end a tenancy if they intend, in good faith, to convert a rental unit to a non-residential use. Based on the totality of the documentary evidence and testimony before me, I am not satisfied that the history of previous disputes constitutes, in and of itself, a lack of good faith on the part of the Landlord. Based on this finding, and the absence of any evidence that the Landlord does not truly intend to convert the rental unit back into a garage for non-residential use, I therefore dismiss the Tenant's application seeking cancellation of the Four Month Notice without Leave to reapply.

As the Four Month Notice complies with section 52 of the *Act*, I therefore find that the Landlord is entitled to an order of possession pursuant to section 55 of the *Act*. As the parties agreed that the Four Month Notice was served on June 9, 2018, I find that the effective date of November 15, 2018, listed on the Four Month Notice does not comply with the minimum notice period specified under section 49(2)(b) of the *Act*. Pursuant to section 53 of the *Act*, the effective vacancy date is deemed to be corrected to November 30, 2018, and the Landlord is therefore entitled to an Order of Possession effective at 1:00 P.M. on November 30, 2018.

Despite the foregoing the parties should be aware that if the Landlord fails to convert the rental unit to non-residential use within a reasonable period after the end of the tenancy or fails to use the rental unit for non-residential purposes for at least six months beginning within a reasonable period after the end of the tenancy, the Tenant will be at liberty to seek compensation in the amount of 12 months' rent pursuant to section 51(2) of the *Act*. The Landlord is also required, pursuant to section 51(1) of the *Act* to provide the Tenant with either one free month of rent, or compensation equivalent to one month's rent prior to the corrected effective date of the Four Month Notice, which is November 30, 2018.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on November 30, 2018**, after service on the Tenant. The Landlord

is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: September 13, 2018

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Residential Tenancy Branch