



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL- 4M ERP OLC PSF RP

### **Introduction**

This hearing dealt with the tenants' 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;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

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 tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

As the tenants confirmed receipt of the 4 Month Notice dated August 26, 2018, I find that this document was served to the tenants 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?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

**Background and Evidence**

This month-to-month tenancy began in January of 2005. Monthly rent is currently set at \$1,125.00, payable on the first day of each month. The tenants continue to reside in the rental unit, which is part of a 4-plex. The tenants moved into the current unit in June of 2008 when the unit became available.

The landlord issued the 4 Month Notice, with an effective move-out date of January 1, 2019 for the following reason: perform renovations or repairs that are so extensive that the rental unit must be vacant.

The landlord testified that the home was 40 years old and very old. The landlord testified that the home required repairs for safety reasons, and submitted estimates dated September 12 and 24, 2018. The landlord testified that due to the amount of dust the renovations and repairs will create, the home must be vacant. The landlord testified that there are no other vacant units available to house the tenants as the tenants are a large family with four kids. The landlord testified that no permits have been obtained as they are not required.

The tenants are disputing the 4 Month Notice as they believe that the landlord issued the 4 Month Notice as the landlord has previously requested the tenants vacate one of the rooms, which the tenants refused. The tenants testified that the landlord was unhappy with the response, and wanted to end the tenancy.

The tenants also believe that the landlord was concerned about the increasing cost of utilities, and wanted to increase the rent. The tenants testified that the landlord did not provide estimates for the repairs until after the tenants had filed their application disputing the 4 Month Notice. The tenants testified that their parents rent and reside in another rental unit in the 4plex and the unit requires repairs and renovations as well.

The tenants also applied for the landlord to provide proper access to the laundry facilities. The tenants testified that their parking spot and laundry room was blocked, and as a result the landlord required them to access the laundry room through another rental unit.

The tenants also requested repairs to the patio railings, a working refrigerator, and an order for the landlord to give proper notice before entering the rental unit.

### **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, has all the necessary permits and approvals required by law and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy".

I find that it was undisputed by both parties that the landlord had only obtained an estimate for the renovations and repairs after the tenants filed their application disputing the 4 Month Notice. Although the landlord testified that the renovations were so extensive that it required the unit to be vacant, the landlord did not obtain any estimates until the tenants filed their application disputing the 4 Month Notice. The landlord did not dispute the fact that they were not in possession of any permits. The tenants testified that the other units in the 4plex were of the same age and repair, and required renovations as well, but the landlord wanted to end this tenancy due to the tenants' refusal to accommodate the landlord's requests.

I find that the landlord has not met the burden of proof to show that the 4 Month Notice was issued in good faith. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. 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, requires the unit to be completely vacant for the purpose of repairs and renovations.

Accordingly, I allow the tenants' application to cancel the 4 Month Notice. The landlord's 4 Month Notice, dated August 25, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants also made an application for repairs and for the landlord to comply with the *Act*. As the landlord has obtained estimates for repairs, I am not satisfied that the landlord has failed in their obligations to provide repairs given the age of the home and as required by the *Act*, but I remind the landlord of their obligations to repair and

maintain the rental unit under section 32 of the *Act*, as well as their obligation to give proper notice before entering a rental unit as stated below: This portion of the tenants' application is dismissed without leave to reapply.

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

**Landlord and tenant obligations to repair and maintain**

**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.

Section 29 (1) of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

I am satisfied that the landlord has denied the tenants proper access to the laundry facilities, and I make an order that the tenants be given proper access to the laundry facilities without having to enter another rental unit. If the tenants continue to be denied access to the laundry facilities, the tenants may apply for monetary compensation for the losses associated with the landlord's failure to comply with the *Act*, the tenancy agreement, and this order.

### **Conclusion**

The tenants' application to cancel the landlord's 4 Month Notice is allowed. The landlord's 4 Month Notice, dated August 26, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the landlord provide access to the laundry facilities without requiring the tenants to access the facilities by entering another rental unit. I dismiss the remaining portion of the tenants' application 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: November 13, 2018

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Residential Tenancy Branch