



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M, FFT

### 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 (the 4 Month Notice) pursuant to section 49; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenants confirmed that they received the 4 Month Notice posted on their door by the landlord on October 25, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on November 21, 2018, they received a copy of the tenants' dispute resolution hearing package sent by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should the landlord's 4 Month Notice for Landlord's Use of Property (the 4 Month Notice) be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This tenancy began as a one-year fixed term tenancy in October 2012. At the expiration of the initial term, the tenancy continued as a month-to-month tenancy. Monthly rent has remained at \$930.00, throughout the course of this tenancy, payable in advance by the first of each month.

The landlord's 4 Month Notice, entered into written evidence by the tenants, identified the following reason(s) for seeking an end to this tenancy:

*I am ending your tenancy because I am going to:*

- *perform renovations or repairs that are so extensive that the rental unit must be vacant.*

The tenants applied to cancel the 4 Month Notice because they did not believe that the landlord would be undertaking the renovations claimed by the landlord.

The landlord said that when they first issued the 4 Month Notice they understood that the renovations planned would not require a building permit. As the municipal building code was changing on December 7, 2018, the landlord discovered that a building permit would be necessary, after all. The landlord entered into written evidence a copy of the December 4, 2018, Building Permit issued by the local municipality.

At the hearing, the landlord said that they were planning to spend about three or four months on the renovations, and move into the rental unit after these renovations were completed. The landlord testified that they intended to issue a new 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) before the end of December 2018.

### Analysis

Although the tenants applied to cancel the 4 Month Notice, the burden of demonstrating that an end of tenancy is required rests with the landlord. Paragraph 49(6)(a) of the *Act* reads in part as follows:

**49** (6) *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;*

In this case, there is undisputed written evidence and sworn testimony from the landlord that the landlord did not have all of the necessary permits and approvals required by law to undertake the renovations and repairs before the landlord issued the 4 Month Notice. The 4 Month Notice also notes that this is a requirement before a 4 Month Notice can be issued. Under these circumstances, I find that the landlord's 4 Month Notice was issued prematurely and without the necessary approvals and permits required by law in place. For these reasons, I allow the tenant's application to cancel the 4 Month Notice.

Since the tenants have been successful in this application, I allow the tenants to obtain the recovery of their \$100.00 filing fee for this application from the landlord who issued the 4 Month Notice.

### Conclusion

I allow the tenants' application to cancel the 4 Month Notice. The 4 Month Notice is of no continuing force or effect and this tenancy continues until ended in accordance with the *Act*.

As the tenants have been successful, I issue a monetary Order in the amount of \$100.00, to enable the tenants to recover the filing fee for this application. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. This monetary award may also be obtained through the tenants' withholding of \$100.00 from a future monthly rent payment to the landlord.

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: December 14, 2018

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Residential Tenancy Branch