



# Dispute Resolution Services

Page: 1

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* ("Act") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated October 14, 2018 ("4 Month Notice"), pursuant to section 49(6); and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant RG" did not attend this hearing, which lasted approximately 37 minutes.

Tenant RM ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to speak on behalf of tenant RG, who is his wife, as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenant confirmed receipt of the landlord's 4 Month Notice on October 18, 2018. The landlord stated that he served it to the tenant by registered mail on October 14, 2018. The tenant stated that it was postmarked for October 15, 2018. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 4 Month Notice on October 18, 2018.

### Issues 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 recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime in 2013 with the former landlord. The landlord purchased the rental unit sometime in June or July 2016. Monthly rent in the current amount of \$1,100.00 is payable on the first day each month. A security deposit of \$550.00 was paid by the tenants and the former landlord transferred it to the landlord. The tenants continue to reside in the rental unit. A written tenancy agreement was signed between the two tenants and the landlord after he purchased the property. The rental unit is the upper portion of a house.

Both parties agreed that the landlord issued the 4 Month Notice, with an effective move-out date of February 15, 2019, for the following reason:

- ...*demolish the rental unit.*

The landlord testified that he issued the 4 Month Notice to the tenants because he wants to demolish the house and build a duplex house. He said that approximately three to four months prior to issuing the notice to the tenants, he applied for a building permit and received it on October 1, 2018. He claimed that he issued the notice on October 14, 2018, after receiving the building permit and providing a copy to the tenants with the notice. He stated that the permit allowed him to start the first stage of the demolition process by deconstructing the house, including the drywall, asbestos, roof, and then reporting to the City. He maintained that the first stage had to be completed before the second stage, which is to obtain another permit to demolish the structure of the house.

The tenant stated that he received the building permit and did not dispute its authenticity. He maintained that he knew the tenants would have to leave the rental unit eventually in order for the landlord to demolish but they could stay because he did not have all of his permits in place for demolition at this stage. The tenant pointed to the payment receipt for the building permit to state that it was not a permit. The tenant stated that he works in a hardware store and does home repairs and knows a friend in salvage work. He claimed that there is no reason why the tenants cannot live in the rental unit during the first stage of the process. He explained that the landlord only obtained a salvage permit but not the survey for hazardous materials that is referenced in the building permit.

The tenant stated that he spoke with the City and they informed him that the landlord needs both the salvage and the demolition permit in order to demolish the unit. He said that he recorded their conversation but did not submit the recording, or any written documentation from the City, confirming the above information. He claimed that the landlord did not have the demolition permit and therefore, does not have all permits and approvals required by law to demolish the unit.

The tenant testified that the landlord issued the 4 Month Notice in bad faith. He maintained that the landlord lied about the method and date of service, indicating on page 1 of the notice that he served it in person on October 14, 2018, when he actually served it by registered mail. He then claimed that the landlord lied about when he mailed it, indicating it was stamped for October 15, 2018, not October 14, as claimed by the landlord. The tenant stated that the landlord also put the wrong effective date on the notice, indicating February 15 on page 1 of the notice, instead of the first of the month when the tenants pay rent. He said that the landlord did not check a box on page 2 of the notice whether he had all permits and approvals required by law to demolish the unit or that he did not need any. He claimed that the landlord put a phone number for another person on the notice, rather than himself, so the tenants could not contact him to resolve this matter before the hearing.

The tenant explained that the landlord has not tried to increase the tenants' rent, even though the tenant feels that they are paying under market value for rent. He stated that there have not been any other tensions with the landlord during this tenancy. He said that the property was well managed before the landlord bought the unit.

### Analysis

According to subsection 49(8)(b) of the *Act*, tenants may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after they receive the notice. The tenants received the 4 Month Notice on October 18, 2018 and filed their application to dispute it on November 13, 2018. Therefore, the tenants are within the thirty day time limit under the *Act*. Accordingly, I find that the landlord has to justify, on a balance of probabilities, the basis of the 4 Month Notice, in order for it to be issued to the tenants in the first place.

Subsection 49(6)(a) 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 to demolish the rental unit.

*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.”*

Based on a balance of probabilities and for the reasons outlined below, I find that the landlord has met his onus of proof to show that he issued the 4 Month Notice in good faith to demolish the rental unit.

I find that the landlord intends to demolish the rental unit and has all the necessary permits and approvals required by law, that he can obtain at this stage with the tenants still occupying the unit. He obtained a valid building permit for the rental unit, listing the address, the name of the landlord's architect as confirmed by the landlord during the hearing, and indicating “two-family dwelling with secondary suite, residential” as stated by the landlord. The authenticity of the building permit was not disputed by the tenants. The landlord obtained this permit on October 1, 2018, which is indicated as the issue

date on page 1 of the permit, before he issued the 4 Month Notice, dated October 14, 2018, to the tenants to end their tenancy.

I accept the landlord's evidence that this building permit is required as the first stage of the demolition process, as requirements for deconstruction must be met, before the second stage demolition permit can be obtained. The building permit indicates at pages 1 and 2 that a hazardous materials survey must be obtained before any salvage work can be completed but the landlord has not started the salvage work yet because the tenants are still residing in the rental unit and he requires it be vacant first. It also indicates that the permit allows salvage and abatement and that a second permit is required to demolish the building, as per the landlord's evidence. I do not accept the tenant's evidence that the payment receipt invalidates the permit because it states that the receipt is not a permit. The building permit clearly indicates it is a permit for the above salvage and abatement work.

The tenants failed to provide any audio recordings or written documentation of their conversation with the City that both the salvage and demolition permits had to be obtained at the same time. The landlord and tenants have no other tension or issues during this tenancy and the landlord has not attempted to increase the tenants' rent. Indicating the wrong effective date, service date and phone number does not invalidate the 4 Month Notice or show bad faith.

Accordingly, I dismiss the tenants' application to cancel the 4 Month Notice. The landlord is entitled to an order of possession under section 55 of the *Act*, effective on the corrected effective date of the notice, February 28, 2019. Rent is due on the first day of the month and therefore the tenancy must end on the day before rent is due as per section 53 of the *Act*.

The landlord is obligated to provide one month's free rent compensation to the tenants, prior to their tenancy ending, as per the 4 Month Notice, dated October 14, 2018.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on February 28, 2019. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 27, 2018

---

Residential Tenancy Branch