



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49.

The male tenant E.C. (the "tenant") and the landlord's agent 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 testified that the landlord was served the notice of dispute resolution packages by registered mail on November 22, 2018. The tenant entered into evidence the Canada Post registered mail receipt and tracking numbers to confirm these registered mailings. The landlord's agent confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlords were deemed served with these packages on November 27, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. If the tenants' application is dismissed and the landlords' Notice to End Tenancy is upheld, are the landlords entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began six to seven years ago and is currently ongoing. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that on October 29, 2018 the tenant's son, who resides at the subject rental property, was personally served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit with an effective date of March 1, 2019 (the "Four Month Notice") at the subject rental property. The tenant confirmed receipt of the Four Month Notice on October 29, 2018. The Four Month Notice was entered into evidence.

The Four Month Notice states that the landlord is ending the tenancy because the landlord is going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Four Month Notice states that no permits and approvals are required by law to do this work.

The landlord's agent testified that over 1.5 years ago the landlords told the tenants that they were planning on selling the subject rental property in the near future. The landlord's agent testified that after consulting with a realtor, the landlords decided that they would completely renovate the subject rental property before putting it on the market.

The landlord's agent testified that the landlords planned on changing the flooring throughout the entire subject rental property, completely renovating both bathrooms, replacing appliances, replacing trim, painting the entire unit, replacing kitchen countertops and refurbishing the kitchen cabinets. The landlord's agent testified that the entire project would take approximately 6-8 weeks and would require vacant possession of the subject rental property.

The landlord's agent testified that since no plumbing, electrical or structural changes were being made, the landlords do not require permits from the city. No documentation to substantiate the above claims was entered into evidence. The landlord's agent testified that the landlords have already received approval for the work to be completed from the strata. The landlords entered into evidence an indemnity agreement between the strata and the landlords for any damages that may arise out of the renovations. The landlord's agent testified that he did not check with the city to confirm that no permits are required for the proposed work. The landlord provided me with no evidence that the landlords checked with the city to confirm that no permits are required.

The tenant did not dispute any of the testimony or evidence of the landlord's agent. The tenant testified that he is disputing the Four Month Notice because he wants to stay at the subject rental property until the end of June 2019 so that his son can finish grade school with his friends. The tenant testified that the rental market in the city in question has made it impossible to find other suitable accommodation for his family and that if they cannot continue to live at the subject rental property they may have to move to a different city and his son will have to change schools.

### Analysis

I find that the Four Month Notice was sufficiently served on the tenants in accordance with section 71(2) of the *Act* on October 29, 2018.

Section 49(6)(b) of the *Act*, states:

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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The law regarding section 49(6)(b) was set out in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Williamson, J. In that case, Mr. Justice Williamson confirmed that the *Residential Tenancy Act* is a statute that seeks to confer a benefit upon tenants; it seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in favour of the benefited group; that is, the tenant.

Mr. Justice Williamson indicated that section 49(6)(b) of the *Act* sets out three requirements:

1. The landlord must have the necessary permits;
2. The landlord must be acting in good faith with respect to the intention to renovate; and
3. The renovations are to be undertaken in a manner that required the rental unit to be vacant.

In regard to the third requirement, Mr. Justice Williamson indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant (empty), in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s.49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

In this case, the landlord's agent testified that he did not check with the city to determine if permits were required and he provided no evidence that the landlords checked with the city. The landlord's agent testified that it was his belief that since no electrical, plumbing or structural changes were being made, permits were not required. No documentation that the absence of structural, electrical or plumbing changes equates to permits not being required was submitted.

I find that the landlords and their agent have failed to prove, on a balance of probabilities, the first of the three requirements set out in section 49(6)(b) of the *Act*. I therefore find that the Four Month Notice is cancelled and that the landlords are not

entitled to an Order of Possession for Demolition, Renovation, Repair or Conversion of Rental Unit.

Since the landlords failed to pass the first requirement of section 49(6)(b) of the *Act*, I decline to consider if they would have passed the second and third requirements.

### Conclusion

The Four Month Notice is cancelled and of no force or effect.

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: January 08, 2019

---

Residential Tenancy Branch