



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL-4M

### Introduction

This hearing dealt with two applications of two tenants joined 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.

All parties attended the hearing via conference call and provided affirmed testimony. Both tenants confirmed that each of their notice of hearing package(s) was served upon the landlord in person on December 29, 2018. The landlord’s agent (the landlord) confirmed receipt of each of the packages as claimed. The tenant, B.N. confirmed that the landlord was served with her submitted documentary evidence in person on January 22, 2019. The landlord confirmed receipt of this package as claimed. The landlord stated that both of the tenants were served with the submitted documentary evidence via Canada Post Registered Mail on January 16, 2019. Both tenants confirmed receipt of these packages. The tenant, A.T. did not submit any documentary evidence and would be relying on the tenant, B.N.’s submission. Neither party raised any service issues. I accept the undisputed affirmed evidence of all parties and find that all parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 4 month notice(s)?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant’s claim and my findings are set out below.

All parties confirmed the landlord served each of the tenants with a 4 month notice to end tenancy issued for landlord's use, to perform renovations or repairs that are so extensive that the rental unit must be vacant.

The provided detailed planned work states:

Bathroom renovations, repiping, kitchen repiping.

The details for work states:

Demolition of walls in the bathroom, change bathtub, toilet, faucet repiping. Install new floor, wall tiles, kitchen repipe.

The tenants argued jointly that the listed work on the notice does not require vacant possession of the rental unit for the landlord to make repairs/renovate. The landlord disputes this claim stating that vacant possession is required due to the nature of the work.

The landlord's witness, C.N. is the general contractor, a certified plumber that has been tasked with completing all of the renovation work (kitchen and bathroom re-piping). The witness stated that the re-piping of the entire domestic piping system will take approximately 3 months to finish for one unit. The witness stated that there are 17 to 18 units total in the building that will undergo work.

The witness also stated that asbestos is a factor as an analysis report of the material found in a bulk sample taken for the rental property has determined that there is asbestos present in the walls where the work is to take place.

Both parties confirmed that the original notice to end tenancy does not include mention of any asbestos. The landlord clarified that finding asbestos would not come until after the tenants had vacated and an analysis report was done on the samples taken from the property.

The landlord's witness stated that the renovation work can be completed with the tenants present, but that this would require a longer completion date. The landlords provided testimony that actual demolition would take 2 days, followed by 3 weeks of air purification for the removal of the asbestos before actual renovation work could begin.

The tenants argued that as the work can be completed without the tenants vacating the premises. The tenants stated the landlord is not entitled to end a tenancy merely because it would be more convenient to renovate/repair these rental units. The tenants argued that the landlord has already done similar repairs in at least 5 units without requiring units to be vacated. The tenants also rely upon a statement from an experienced plumber who has inspected the units and ascertained that there is no need to vacate the units during renovation work. The

tenants also stated that if necessary, the tenants would temporarily vacate the rental unit and return when the repairs are complete.

### Analysis

Section 49(6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where 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.

In this case, both tenants have confirmed that the landlord served each of the tenants with the 4 month notice dated November 29, 2018.

Where a tenant applies to dispute a 4 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 4 Month Notice is based.

In this case both tenants argue that the landlord does not require vacant possession of the rental unit. The landlord has argued that vacant possession is required to perform the listed renovation/repairs of the kitchen and bathroom re-piping. The landlord and his witness provided testimony that the required work is extensive to re-pipe the kitchen and bathroom domestic piping system. The landlord also provided testimony that there is asbestos in the walls and requires removal prior to actual renovation work. The tenant provided arguments that a third party plumber inspected the two rental units and stated that the work could be performed without the tenants vacating the rental premises. The landlord's witness also stated that it was possible to complete the renovation work, but that the process would be longer. The tenants provided submission that convenience is not a factor to be considered if the rental unit is required to be vacant during renovations.

Residential Tenancy Branch Policy Guideline #2, Ending a Tenancy: Landlord's Use of Property, states in part, section D. Renovations or Repairs...*there were three requirements to end a tenancy for renovations or repairs:*

- 1. The landlord must have the necessary permits;*
- 2. The landlord must intend, in good faith, to renovate the rental unit; and*
- 3. The renovations or repairs require the rental unit to be vacant.*

*In order for the third requirement to be met:*

- a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and*
- b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.*

*In considering this third requirement, an arbitrator must determine first whether the unit needs to be empty (i.e. unfurnished and uninhabited) for the renovations to take place, and second, whether the required emptiness can only be achieved by ending the tenancy. A landlord cannot*

*end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work.*

*If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.*

In this case, I find based upon the evidence of both parties that vacant possession is not required to end the tenancy. The landlord's witness provided submissions that it would be possible to complete the renovation work with the tenants present, but the completion process would take longer. The tenants have also stated that they are willing to temporarily vacate the premises during the renovation process. As such, I find that the landlord has failed to provide sufficient evidence that vacant possession is required. The tenants' application(s) are granted. The two 4 month notice(s) dated November 29, 2018 are set aside and the tenancy shall continue.

#### Conclusion

The tenant(s) application(s) to cancel the 4 month notice(s) are granted.

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: February 08, 2019

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Residential Tenancy Branch