



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL- 4M, OLC

### Introduction

This hearing dealt with the tenant's 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed receipt of the submitted documentary evidence provided by the other party. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

### Preliminary Issue

At the outset, the tenant's request for an order for the landlord to comply was discussed in detail. The tenant's application does not provide sufficient details on this request. Discussions with both parties revealed that the tenant seeks repair orders. None of this was provided in the application filed. As such, I find that this portion of the tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The hearing shall proceed on the request to cancel the 4 month notice only.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?

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.

The tenant seeks an order cancelling the 4 month notice dated December 26, 2018. The tenant provided written details which state that the landlord had notified her on November 6, 2018 that the landlord would be occupying the rental unit, but then later notified her on November 8, 2018 that he had changed his mind. The tenant was again notified that the landlord's father in law had become her landlord and was later served with a notice to end tenancy. During the hearing this was clarified by the landlord that he is still the tenant's landlord. The tenant also argues that the landlord is just trying to raise the rent and is seeking an end of tenancy to achieve this.

Both parties agreed that the 4 month notice dated December 26, 2018 was served to the tenant by leaving it on the porch of the rental unit door on December 26, 2018. The 4 month notice sets out an effective end of tenancy date of May 1, 2019 and that the reason it was being given was:

Perform renovations or repairs that are so extensive that the rental unit must be vacant.

No permits and approvals are required by law to do this work.

The details of the planned work state:

Paint, Carpet, Skirting, etc.

The tenant also provided a copy of text message exchanges between herself and the landlord which state in part that the landlord "time has come to sell my house..."

The landlord provided affirmed testimony that the real reasons are the landlord's financial circumstances. The land on which the trailer sits belongs to his father-in-law for which no pad rent is paid by the landlord and the landlord wishes to renovate and occupy the rental space himself with his family. The landlord confirmed that all of the

renovation/repairs were cosmetic that do not require empty possession of the rental unit.

### Analysis

Section 49 (6) (b) states in part that a landlord may end a tenancy 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 that requires the rental unit to be vacant.

In this case, both parties confirmed that the landlord served the tenant with a 4 month notice to end tenancy dated December 26, 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.

I accept the undisputed affirmed evidence of both parties and find that the tenant has been successful in her application for dispute. The landlord provided undisputed affirmed testimony that “the real reason” to end the tenancy were his financial concerns and that the landlord intends to renovate and occupy the rental space. The landlord also confirmed in his direct testimony that the renovation/repairs were cosmetic in nature that do not require it to be vacant.

### Conclusion

The tenant’s application is granted. The 4 month notice dated December 26, 2018 is cancelled and the tenancy shall continue.

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 07, 2019

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Residential Tenancy Branch