



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACE REALTY CORPORATION and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL-4M

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”).

The Tenant and three agents for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence package.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the Four Month Notice to End Tenancy be cancelled?

If the Four Month Notice to End Tenancy is upheld, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The parties were in agreement that the tenancy started on October 1, 2015 and that a security deposit in the amount of \$480.00 was paid at the outset of the tenancy. This was confirmed by the tenancy agreement submitted into evidence. The parties were not in agreement as to the current monthly rent as the Tenant stated that she was paying a reduced amount due to repairs needed in the rental unit. The Landlord stated that monthly rent is \$936.00, while the Tenant stated that monthly rent is \$836.00.

The Landlord testified that the Tenant was served with a Four Month Notice on December 21, 2018. The Tenant confirmed receipt of the Four Month Notice on this date and applied to dispute the notice on January 21, 2019.

The Four Month Notice was submitted into evidence and states the following as the reason for ending the 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.

Further details were provided on the notice as follows:

- Floors to be replaced
- Remove wall sections
- Exterior walls
- Redo kitchen
- Remodel bathroom
- Major renovation
- Mold issues in crawl space – fix ventilation
- Remove wall sections impacted by moisture
- Reinsulate exterior walls – replace windows
- Removal of sink, cabinets and counters
- Remove tub, toilet and sink – replace items

The Landlord provided testimony that permits are not required to complete this work, other than a possible permit for the electrical work which will be assessed once the work has started. The Landlord submitted an email from the property owner, dated January 18, 2019. In the email the property owner states the following:

*I don't have any permits yet, since I don't know exactly what kind of work I will need to do. I can only apply for permits once I can assess the situation see what work requires a permit, and what doesn't. I know I will need an electrical permit, but that need to be done by an electrician, and I can't do that until I know the*

*scope of the work and have an agreed to price. An electrical permit request is placed online by the electrical contractor and is granted immediately. (My son is an electrician) I will not need a permit to renovate the kitchen, replace windows, drywall, flooring, bathroom fixtures or any other plumbing repairs. The plan is, as mentioned, to sell the unit as vacant after the renovations are done...*

The Landlord provided further testimony that the Tenant is unable to continue residing in the rental unit during repairs due to the presence of mould that will be dangerous once the mould is disturbed during the renovations/repairs.

The Tenant stated that she has requested repairs to the rental unit, including that the Landlord deal with mould that is present in the rental unit. She stated that she provided until December 2018 for the issues to be resolved. The Tenant submitted the letter dated November 30, 2018 in which she asked for repairs regarding mould issues in the kitchen as well as repairs to the windows, washer and dryer. The Tenant stated that the repairs were not completed, and she was served with a Four Month Notice. She stated that she also recently found out that the property owner has plans to sell the rental unit.

The Tenant submitted that she is willing to remain in the rental unit while repairs are being completed and make reasonable accommodations for the repairs to be done while continuing the tenancy. The Tenant also noted that after receiving the Four Month Notice she asked the Landlord for copies of the permits but did not receive any.

### Analysis

The Four Month Notice was provided to the Tenant pursuant to Section 49(6) of the *Act*. Section 49(8)(b) of the *Act* states that a tenant has 30 days in which to dispute a notice given under Section 49(6). As the Tenant received the Four Month Notice on December 21, 2018 and she filed the Application for Dispute Resolution on January 21, 2018, I find that she applied within the required time limit.

Although 30 days would have been on January 20, 2018, I find that the Tenant applied the following day which is still within the time allowable due to the last day falling on a weekend. As such, the matter before me is whether the Four Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

*Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property* provides that there are 3 requirements for ending 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.

Policy Guideline 2 provides further clarification on the requirement for the rental unit to be empty and states that the repairs must be so extensive that the only way to complete the repairs is for the unit to be vacant.

While the Landlord stated that no permits are required, which was also noted in an email from the property owner, there was no further documentary evidence submitted to establish this. A landlord has an obligation to have the necessary permits or proof that permits are not required, such as a letter from the city which might confirm that the work being completed does not require permits.

Although the Landlord stated that the repairs are so extensive that the unit must be empty for them to be completed, no documentary evidence was submitted that would establish that the repairs require the rental unit to be vacant. The Tenant also stated that she was willing to reasonably accommodate the completion of repairs in the rental unit and there was insufficient documentary evidence submitted about the planned repairs to determine whether this would be a viable option.

As stated, the Landlord has the burden of proof to prove, on a balance of probabilities, that the Four Month Notice is valid. Without sufficient evidence to establish that they have the necessary permits (or that permits are not required) and that the repairs require vacant possession of the rental unit, I am not satisfied that the Landlord had cause to end the tenancy with a Four Month Notice. As such, I find that the Tenant was successful with the application to cancel the notice.

The Four Month Notice dated December 21, 2018 is cancelled and of no force or effect. The tenancy continues until ended in accordance with the *Act*.

### Conclusion

The Four Month Notice dated December 21, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: March 07, 2019

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Residential Tenancy Branch