



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 25 SULLIVAN DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL-4M

### Introduction

This hearing dealt with the tenant's application pursuant to section 49 of 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).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that on February 19, 2019, they received the landlord's 4 Month Notice sent by registered mail by the landlord on February 13, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant testified that they sent the landlord a copy of their dispute resolution hearing package by registered mail on March 28, 2019. The tenant provided sworn testimony and written evidence in the form of the Canada Post Tracking Number and Customer Receipt to demonstrate that this package was successfully delivered to the landlord on April 1, 2019. At first, landlord representative SA (the landlord) said that they had not received that hearing package. Later, SA confirmed that this package had been received. I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The tenant testified that their written evidence was provided to the landlord in two steps; some was with the hearing package and the remainder was sent by registered mail on April 3, 2019. The tenant provided written evidence and sworn testimony that the additional evidence was successfully delivered to the landlord on April 4, 2019. The landlord testified that they had received some of the tenant's written evidence, but only up to page 122 (i.e., pages 109 to 121). The tenant said that they sent all of the package to the landlord, including all pages that followed page 122. The tenant

confirmed having received a copy of the landlord's written evidence, which was limited to a copy of the Building Permit the landlord had received from the municipality on July 16, 2018. Although I accept that the parties have exchanged and served written evidence to one another in accordance with section 88 of the *Act*, I instructed the tenant to read into the record of this hearing, the relevant portions of their written evidence that the landlord claimed had not been received. This evidence addressed the claims by the tenant that the standard application form for the Building Permit and the Municipal Bylaw indicated that written permission had to be obtained from the Municipality in order to have a Building Permit remain valid after six months had expired since the issuance of that Permit.

The other landlord representative, who identified themselves as the property manager for the company that owns this property, did not join the teleconference until the last ten minutes of this twenty-six minute hearing.

#### Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenant testified that this tenancy began in June 2016. Although there is no written tenancy agreement, the parties agreed that monthly rent is supposed to be \$500.00, payable in advance on the first of the month. As payment of rent was an issue identified in a previous hearing of applications from both parties relating to a 10 Day Notice to End Tenancy issued by the landlord (see above), I make no findings with respect to the payment of monthly rent, how much rent if any is owing, when rent is due, or with respect to where or how rent is to be paid during this tenancy. Another arbitrator appointed pursuant to the *Act* has made rulings with respect to these issues, and, as such, I am not at liberty to address such issues in the context of the current application properly before me.

The landlord's 4 Month Notice, entered into written evidence by the parties, identified the following reason for seeking an end to this tenancy by June 30, 2019:

I am ending your tenancy because I am going to:

- demolish the rental unit

The landlord's only written evidence was a July 18, 2018 Building Permit issued by the Municipality, which the landlord indicated they believed remained valid.

The tenant read into the record of this hearing the following excerpt from the municipality's application form for obtaining a building permit:

*...I am aware that this building permit application shall become void after six months from application date unless an extension has been requested in writing and granted in writing by the Manager Building Division, or delegate...*

The tenant also read into the record of this hearing the following contents of section 12 of the relevant municipal bylaw, entered into written evidence by the tenant:

*12. Lapse of Permit*

*A building permit shall become void unless construction pursuant to the permit is commenced within six months of the date of issuance of the permit. No building permits shall be valid after six months, unless such time has been extended in writing by the Building Inspector, but in no case shall such extension exceed two years from the date of issuance of said permit...*

At the hearing, the landlord's representatives testified that they were unaware of this provision. They confirmed that the landlord had not submitted a request in writing for an extension of time for the building permit to demolish this dwelling, nor had any such extension been provided by the municipal Building Inspector, as required by section 12 of the above-noted bylaw.

Analysis

Section 49 of the Act reads in part as follows:

- (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
  - (i) not earlier than 4 months after the date the tenant receives the notice,*
  - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement,...**

*(6)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 do any of the following:*

*(a)demolish the rental unit;...*

In this case, as the tenant has applied to cancel the 4 Month Notice within the thirty days allowed pursuant to section 49 of the *Act*, the onus rests with the landlord to demonstrate that the reason stated on the 4 Month Notice to end this tenancy was valid at the time that Notice was issued to the tenant.

Although the landlord provided written evidence that they had obtained a Building Permit to demolish the rental dwelling, there is undisputed evidence that a written extension needed to have been obtained by the landlord in order to avoid allowing that Building Permit to lapse. There is undisputed evidence that more than six months had passed between the time the Building Permit was issued on July 18, 2018 and when the landlord issued the 4 Month Notice. The landlord's representatives confirmed that the landlord had neither submitted a request for an extension of time for the Building Permit nor obtained written authorization to obtain an extension of time for that Permit. Under these circumstances, I find that the landlord's 4 Month Notice does not meet the requirement of section 49(6) of the *Act*, as the landlord did not have "all the necessary permits and approvals required by law" at the time the 4 Month Notice was issued. As such, I allow the tenant's application to cancel the 4 Month Notice.

### Conclusion

The tenant's application to cancel the 4 Month Notice is allowed. The landlord's 4 Month Notice is set aside and is of no continuing force nor 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: April 23, 2019

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Residential Tenancy Branch