



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1955 WESTERN APARTMENTS  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL-4M, OLC, FFT

### **Introduction**

This hearing was originally convened in response to a joiner application of 45 tenants (45 rental units) to dispute the landlord's, *Four (4) Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* pursuant to Section 49(6)(b) of the *Residential Tenancy Act* (the Act), all dated February 22, 2019 and with an effective date of June 30, 2019. The majority of tenant applications further seek the landlord be Ordered to comply with the Act and also to recover their respective filing fees from the landlord.

The parties, as listed, all personally attended the in- person hearing which was conducted at the Residential Tenancy Branch. The larger tenants group was represented by the 'lead applicant', and 3 other applicants of this matter as agents for the tenants.

Both parties submitted evidence to me as prescribed by the Rules of Procedure (ROP) and the parties acknowledged trading that evidence. The tenants submitted a quantum of late evidence one week before the hearing which was acknowledged received by the landlord and which they stated having had time to review. Therefore, all document evidence submitted and acknowledged received by the parties *prior to the hearing date* was admitted.

Prior to the start of the hearing the tenants submitted 10 pages of evidence also provided to the landlord. The landlord questioned its admissibility as prejudicial. The tenant stated the majority of the late evidence was new. The tenant explained the majority of the information was new and relevant and only recently obtained or compiled the day before, and that it concerned an infrastructure matter at issue and responses to the landlord's earlier submissions. The landlord was offered time to review the evidence. The parties orally exchanged some information in respect to the late

evidence. However, on its admissibility, applying Rule 3.17 of the ROP I have determined the late evidence claimed new and relevant *was available before the hearing when the tenants previously served their evidence* and therefore inadmissible. As a result that evidence does not form part of this decision.

Both parties were given opportunity to be heard, to present testimony and other evidence, to call witnesses, make submissions, question, and respond to the other. No preliminary matters were brought forth. Neither of the parties requested an adjournment, a Summons to Testify, nor presented witnesses. The hearing proceeded on the merits of the application. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Only relevant evidence has been considered in the making of this Decision.

#### *Amendment to Style of Cause*

I canvassed an update as to changes in the style of cause/list of applicants. The tenants and landlord agreed that the tenants in rental units **116** (DT), **202** (MP), **203** (JB), **204** (LC), **207** (MM), **222** (IM), and **311** (RS) had entered into binding agreements with the landlord in respect to an end of their tenancy and effectively were no longer disputing the landlord's Notice to End. *Without prejudice the status of **these applications are noted as withdrawn** and are not reflected in the Style of Cause.*

#### **Issue(s) to be Decided**

Does the landlord have all of the necessary **permits and approvals** required by law and were they obtained prior to giving the tenants Notice to End pursuant to Section 49(6)?

Does the landlord intend in **good faith** to accomplish the purpose for ending the tenancies [renovations or repairs] **without ulterior motive**?

Are the intended **renovations and repairs** as proposed by the landlord sufficiently extensive so as to necessitate the rental unit(s) to be vacant / empty; and only achieved through ending the tenancy?

#### **Background and Evidence**

The relevant evidence in this matter is as follows. On February 22, 2019 the landlord sent the applicants a *Four (4) Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* (landlord's Notice) by registered mail, with an effective date of June 30, 2019. The tenants disputed the Notice to End within the

required 30 days to do so. A joiner application was established and a Notice of Dispute Resolution Proceeding - JOINER issued April 05, 2019.

The landlord's Notice states the landlord is ending the applicant's tenancies because they are *performing renovations or repairs that are so extensive that the rental unit must be vacant*; and, *I have obtained all permits and approvals required by law to do this work*. The planned work is stated as: *The work comprises the renovation of 65 residential units at (residential property address); and, detailed as follows.*

- Abatement for asbestos where necessary;
- Demolition of walls to adapt to new bathrooms and kitchen layout;
- Removal of existing floor finishing, blinds, windows, sliding-doors, countertops, appliances, cabinets, light and plumbing fixtures, bathtubs;
- Running new stacks pipe for the new layouts and bathrooms;
- Installation of in-suite laundry including new stacks, proper closet and appliances;
- Installation of new floors in the bedrooms, living room, kitchen and bathrooms;
- Installation of new countertops and cabinets in the kitchens and bathrooms;
- Installation of new appliances, new bathtub and new plumbing and light fixtures;
- New exhaust ducts lines will be installed to the new bathrooms and new laundry in suite;
- New interior and exterior painting, new windows and sliding doors, as well as new railings on the balconies;
- New common area finishing including the main lobby.

The parties were apprised that in this type of matter the onus is on the landlord to prove that they issued a valid and compliant Notice to End pursuant with the Act. The parties were summarily apprised that the test or requirements which must be met in this matter by the landlord to end a tenancy for renovations (or repairs) is that they have the requisite permits and approvals to carry out the intended work, intend in good faith (honesty of intention with no ulterior motive) to renovate the rental units (the purpose stated for ending the tenancies), and that the proposed renovations are so extensive that they cannot be performed unless the landlord has vacant or empty possession of the rental unit; and that the only way to achieve vacancy is to terminate the tenancy.

The landlord testified the intended renovations to the 51 year old property of 65 rental units are in order to update aging aspects of the building systems so as to maintain or extend the service life of the rental housing and improve the "liveability" of the residential property.

The tenant's testimony alleges the landlord has an ulterior motive to end all tenancies so as to enable re-renting them at market rents which they purport are substantially higher. Further, the tenant's position was that the landlord's proposed renovations are

primarily cosmetic and not so extensive they necessitate the units be vacant via terminating the tenancies.

Landlord's counsel (the landlord) led submissions with the Architectural drawings, Electrical and Engineering drawings for the intended renovations, which all were completed in November 2018. The landlord further provided an Asbestos Survey of selected areas of the residential property undertaken in January 2019.

### *Permits*

It was undisputed by both the parties the landlord has submitted local government Building, Electrical and Plumbing permits all dated prior or on the date the Notices to End were issued. The landlord testified that there were no other permits or approvals pending or required for this matter. The tenants agreed they had no knowledge of other local government permits or approvals required so as to enable the landlord to carry out the intended work.

### *Good faith*

It was undisputed by both the parties the landlord has established they truly intend to do what they stated on the Notices to End tenancy of this matter: to carry out renovations. Never the less, the tenants argued that despite the landlord's intent to update and renovate, as they have described, the landlord has an alternative reason, from the stated reason, for seeking an end to the tenancies. The tenants testified that the landlord has been "evasive" in denying tenants information and that the proposed work is not needed, and but "a matter of business" (JD). The tenants testified that the proposed work is, "all cosmetic" as "the building has been maintained". The tenants testified that the landlord's plans are too vague and they are using, "loopholes" in a plan to then, "raise rents" (MJ). The tenants testified that the landlord's other purpose and ulterior motive is to vacate the building so as they can later charge higher market rents. GC testified having provided proof of the landlord's other purpose and ulterior motive. The tenants provided into evidence an excerpt from the landlord's Supreme Court Petition/action against the City and that it is relevant to this matter. The Petition, dated April 26, 2019, in part states,

10. The Petitioners have secured a construction loan to pay for the Renovations. One of the terms of the construction loan is that the Rental Building will be rented out at market rents following the Renovations. - *as written*

The tenants claim the petition excerpt raises a question of whether the landlord has a

dishonest purpose for ending all of the tenancies. They claim it is proof of an ulterior motive behind their intent to renovate for seeking total vacancy of the building.

The landlord testified not having an ulterior motive and that securing the construction loan supports good faith intent on their part to carry out renovations. The landlord's principle, JM, testified that the plans to renovate the building came before securing the loan for the renovations.

The landlord submitted that Residential Tenancy Policy Guideline 2 sets out the test for establishing good faith, which the landlord states as follows:

- a. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy.*
- b. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. - as submitted*

The landlord testified they are making necessary renovations to prolong the useful life of the building and increase its liveability, in a timely manner. The landlord claims they are relying on the opinions of their professionals to complete the intended work and in reliance on them have determined the building must be vacant for a period of at least 9 months, and possibly longer.

*Necessity of ending tenancies (vacant or empty possession)*

The landlord provided written statements from their set of professionals to opine on the contemplated renovations: the architect, the general contractor, the plumber, and electrical engineer. The landlord also provided a Renovation Asbestos Survey by OHC conducted under applicable Regulation in January 2019.

In part the architect's statement opines that the general renovations work of the building's water, electrical and fire alarm systems will need to be turned off on a regular basis and at times for long periods.

In part the plumber's statement opines that the entire period for the plumbing renovations will be extensive and water service will have to be shut off to the entire building for approximately 8-10 months if there are no isolation valves in the building. Alternatively, If there are isolation valves in the building water service to each unit is expected to be shut off, at a minimum 2-3 weeks.

In part the electrical engineer's statement opines that there will be prolonged power and fire alarm systems outages, with likelihood of added delays as these same systems are exposed, because of possible encounter with asbestos.

In summary the Asbestos Survey contractor identified a series of areas with varying concentrations of asbestos and some likely areas with asbestos, as surveyed from select residential and non- residential areas of the building.

In part the general contractor's statement opines that during the ongoing 9 months of the renovation project all units in the building will be required to be vacant as there will be no electrical or water servicing to the units and fire safety systems will not be operational for long periods. However, if the project is "phased" ( meaning that 1 of 3 sections of the residential units at a time could be isolated and serviced without affecting the remaining sections) each unit would be vacant for 6 months, however the entire project would be significantly slowed down to 18 months. The statement explains that not phasing the project takes advantages of efficiencies of scale and timing in the completion of the work. The general contractor's statement lists the renovation to the components of the building and to the individual rental units.

The tenants questioned the necessity of the work and that it was "mostly cosmetic". They also argued the landlord's project plans and opinions of their contractors as "too vague". They testified being informed by the Building Division of the City that according to their plumbing records of the building there does indeed appear to be isolation valves in the plumbing system, allowing a "phasing" of the plumbing work;

The tenants argued that in the absence of a project schedule, or *Gantt chart*, they were unable to assess the landlord's evidence respecting the claimed timelines for the renovations. The tenants testified that from what they could see of the landlord's plans there was no major structural work and that any demolition was to non- bearing walls to reconfigure a small area of each unit, and in the case of one unit (209- GC) some features destined for replacement, such as a balcony, railing and sliding door do not exist.

The tenants provided an itemized statement in response to the landlord's evidence by one of the tenants (LM) stating to have building (developer, carpenter) and renovation experience. The statement provides their insight of the renovations from their understanding of what is being done. They opine in conclusion that in their experience the scope of all of the proposed work can be done with the tenants living in their units, albeit with some inconvenience.

The tenants testified that they are all willing to accommodate the landlord given notice for periods in which their rental units would be rendered without water or electricity, or if necessary, in the course of asbestos abatement or removal. They submitted that they agree to allow renovations to be done, while they remain living in their units. They provided evidence from the tenants stating their willingness to temporarily live in a different comparable suite if renovations required their suite to be empty. The tenants testified about meeting with the City Fire Marshall to mitigate periods when the fire safety system is not operational by utilizing a *fire watch* system.

The landlord's response was that there were no plans to carry out renovations in phases. Landlord, JM, testified that every room of the units, as well as hallways and the lobby would be affected by some component of the renovations. They further confirmed that there is no plan or offer to temporarily relocate tenants to different suites.

Both parties submitted references and excerpts of *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, and *Bauman v. Aarti Investments Ltd.*, 2018 BCSC 636, with a view to guiding my decision in respect to Section 49(6) of the Act.

### **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

**Section 49(6)(b)** of the Act, in part, permits as follows,

***49 (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:*

*(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;*

I find that on February 22, 2018 the landlord issued the tenants a 4 Month Notice to End Tenancy for renovations in the approved form pursuant to Section 52.

I find that the test established by **Section 49(6)(b)** of the Act is aptly articulated by **Residential Tenancy Policy Guideline 2. Ending a Tenancy: Landlord's Use of Property** (May 2018), which I find takes a reasonable approach. I find the test in this matter is the landlord's onus to establish the following.

1). Permits

Landlord must provide all necessary final permits and all necessary final approvals required by law, *dated on or prior to February 22, 2019*. Landlord must provide any conditional permits germane/crucial to the proposed renovations *dated on or prior to February 22, 2019*.

2). Good Faith

Landlord must provide proof there is *honest intent* to carry out the purpose stated on the Notice to End.

If *good faith* is questioned, tenant may provide evidence in support of a claim or question of not acting in good faith. Then, the onus is on landlord to establish both of the following:

- a). honesty of intention that landlord is intending to carry out activities for the purpose of renovation(s).
- b). that they do not have another purpose or an ulterior motive for ending the tenancy.

3). Renovations and necessity to end tenancy

Proof that renovation(s) necessitate rental units to be vacant / empty (a landlord cannot end a tenancy for renovations simply because it would be easier or more economical to complete the work)

- a). Proof that renovation(s) are so extensive they require rental unit(s) to be empty for the renovations to take place, and,
- b). Proof that the only way to achieve the emptiness or vacancy must be by ending or terminating the tenancy.

In addition, the following must be known.

**Residential Tenancy Policy Guideline 2. Ending a Tenancy: Landlord use of property**, in part states as follows;

*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 other words, **Section 49(6)(b)** does not allow a landlord to end a tenancy for the purpose of renovations or repairs if any of the following circumstances apply:*

- the landlord does not have all necessary permits and approvals required by law;*
- the landlord is not acting in good faith;*
- the renovations or repairs do not require the unit to be empty (regardless of whether it would be easier or more economical to conduct the renovations or repairs if the unit were empty); or*
- it is possible to carry out the renovations or repairs without ending the tenancy (i.e. if the tenant is willing to temporarily empty and vacate the unit during the renovations or repairs, and then move back in once they are complete).*

I find it is undisputed the landlord has met the first part of the test. The landlord has all of the required permits and approvals required by law, *dated on or prior to February 22, 2019.*

In respect to the second part of the test, contrary to the landlord's submitted interpretation I do not accept that the test for establishing *good faith* in **Residential Tenancy Policy Guideline 2** is that there must be an absence of an ulterior motive as *the primary motive* for seeking end to a tenancy. I find that the Policy guideline respecting *good faith* does not permit a landlord any ulterior motive as basis for seeking an end to a tenancy.

I find it is undisputed the landlord truly intends to carry out activities for the purpose of renovation. However, the tenants called into question the landlord's good faith in this matter because of their belief that the intended renovations do not require vacancy / ending their tenancy. The tenants stated belief of the landlord's ulterior motive is rooted in a term of a construction loan for the renovations stating within that term that following the renovations the landlord *must* rent out the units at market rents. The tenants characterized it as proof that, behind their intent to renovate, the landlord has an ulterior motive for seeking total vacancy of the building. The landlord denied the allegation of an ulterior motive in their reliance on the opinions of their building and construction industry professionals that the building must be vacant in order to complete the renovations.

In respect to the third part of the test, it is undisputed that the proposed renovations in their entirety are not a minor undertaking and are at significant investment, with possibility they may take longer than proposed. The landlord's evidence makes references of all work to take approximately 9 months. I find that my focus in this matter

is not on how much time the totality of all the renovation work proposed may take, as it is subject to unforeseen factors and the renovations are not limited to solely the rental units. But rather, I must determine whether the renovations are to be undertaken in a manner that the rental units need to be vacant or empty (the tenancies ended) to perform the renovations. I find the *best available evidence* in these matters is from written statements without benefit of *viva voce* (oral) examination of the authors or cross-examination.

I find from the landlord's evidence the architects' written statement clearly describes the changes and challenges of the renovations and that the work will effect tenants for "long periods", however does not state the rental units need to be vacant or empty (i.e. unfurnished and uninhabited) for their proposed changes or the renovations to take place.

I find from the landlord's evidence the plumber's written statement summarizes that water to the rental units could be shut off 2-3 weeks, or possibly up to 10 months. I find this portion of the evidence, in spite of the explanation provided regarding 'isolation valves', diminishes its evidentiary weight due primarily to its vagueness. But moreover, I find their statement does not say that the rental units need to be vacant or empty (i.e. unfurnished and uninhabited) for their work or the renovations to take place.

I find from the landlord's evidence the electrical engineer's written statement says that there will be "prolonged outages", or, continuing for a long time, however does not state that the rental units need to be vacant or empty (i.e. unfurnished and uninhabited) for their work or the renovations to take place.

I find from the landlord's evidence that the written Asbestos Report addresses risk of hazardous material to guide its management during the renovation project. It does not state nor recommend the rental units need to be vacant or empty (i.e. unfurnished and uninhabited), toward managing the identified risk.

On the other hand, I find the general contractor's written statement leaves little doubt to their thinking that all units will be required to be vacant during the entire course of the 9 months project, or 6 months in a phased project. While this opinion in the landlord's evidence is less ambiguous I find that it is based on estimates of the time required to complete the entire scope of the renovation project, and not solely impingement on a rental unit.

In respect to timelines, I have not been presented with sufficient evidence defining what the landlord's evidence has repeatedly referenced as, "long periods" and "long time". In

this regard I prefer the evidence of the tenants that the length of time that each rental unit will be impacted during the project is vague.

I find from the tenant's evidence the written and testimonial statements of all the affected tenants clearly communicate their willingness to accommodate the ongoing renovations when required to do so.

I find *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 in part states,

[22] Therefore, *where it is possible to carry out renovations without ending the tenancy, there is no need to apply s.49(6). On the other hand, where the only way in which the landlord would be able to obtain an empty unit is through termination of the tenancy, s. 49(6) will apply.*

While I accept that the proposed renovations have challenges and are intrusive on inhabitants, I find that the available statement evidence upon which the landlord relies does not sufficiently support the renovations are so extensive so as to require that a rental unit must be vacant or empty in order for them to take place. I further accept the evidence of the tenants that terminating the tenancies is not the only manner in which to achieve any necessary vacancy of the rental unit. Therefore, to the question begged by Section 49(6)(b) of the Act, I find insufficient evidence to support that the renovation work *requires* the rental units to be vacant.

Having found that the landlord's building and construction industry professionals have largely not articulated that the building must be vacant in order to complete the renovations, I find that the landlord's response to the question of their *good faith* intent does not adequately meet their onus to establish they do not have another purpose or ulterior motive for ending the tenancies.

As a result of all the above, I find the landlord's *Four (4) Month Notice(s) to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* pursuant to **Section 49(6)(b)** of the *Residential Tenancy Act* dated February 22, 2019 ineffective to end the tenancies of this matter.

I find it unnecessary to Order the Landlord to comply with the Act.

As the tenants have been successful in their applications, with the exception of rental units 109, 121, 212, and 306 not having applied to recover their filing fee, the applicable tenants of this joinder matter, are authorized to recover their filing fee from the landlord.

## **ORDERS**

**I Order** that the *Four (4) Month Notices to End Tenancy* dated February 22, 2019 within this JOINER application are **cancelled and of no effect**.

**I Order** that the applicable tenants of this joiner matter, are authorized to make a one time deduction from a future rent equivalent to their respective filing fee for their application of **\$100.00**.

**I Order** that if, **on or after May 14, 2019**, a tenant of this matter entered into a binding written agreement with the landlord to end their tenancy they are excluded from recovering their filing fee.

## **Conclusion**

The tenant's applications are granted in the above terms pursuant to my Orders.

**This Decision is final and binding.**

*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: May 24, 2019

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Residential Tenancy Branch