



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 2, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Renovations (the "Four Month Notice") dated March 29, 2019; and
- an order granting the return of the filing fee.

The Tenant as well as the Landlord's Counsel, R.H., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord in person on May 5, 2019. R.H. confirmed receipt. R.H. stated that the Landlord served the Tenant with his documentary evidence in person on May 30, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by the Landlord I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice dated March 29, 2019, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The parties submitted a copy of the tenancy agreement which confirms that the tenancy began on July 15, 2010. Currently, the Tenant pays \$780.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 as well as a pet deposit in the amount of \$200.00.

R.H. stated that the Landlord served the Tenant in person with the Four Month Notice on March 30, 2019, with an effective vacancy date of August 1, 2019. The Tenant confirmed having received the Four Month Notice on March 30, 2019. The Landlord's reason for ending the tenancy on the Four Month Notice is to;

“perform renovations or repairs that are so extensive that the rental unit must be vacant.”

The Landlord has also indicated on the Four Month Notice that he has obtained all permits and approvals required by law to do this work. A copy of the Four month notice was submitted by both parties in support.

R.H. stated that the Landlord intends to renovate the upstairs and downstairs of the rental unit. R.H. stated that the scope of the renovations taking place upstairs includes; an addition and construction of walls to add bedrooms, new electrical installation for lights, plugs, bathroom fan, baseboard heaters, and thermostats. R.H. stated that the Landlord is also intending on moving the washer and dryer and creating a new outlet, building an addition of a bathroom, installing new flooring, installing a new hot water tank, drywall work, installing molding, and painting.

R.H. stated that the scope of the work for the downstairs of the rental unit includes; installing new kitchen cabinets, installing a new sink, adding a dishwasher; adding a bathroom fan, installing a new bathroom vanity, replacing baseboard heaters and thermostats, installing new flooring, installing new baseboards, and painting.

R.H. stated that the Landlord was granted an electrical installation permit for renovation of the rental unit on January 29, 2019. R.H. stated that the Landlord applied for a residential building permit with the City on February 21, 2019, and was granted a residential building permit on April 1, 2019.

R.H. submits that the renovations can only be completed if the rental unit is vacant. R.H. stated that the work to the rental unit requires extensive electrical and plumbing work, which would result in the unit being without heat, electricity, and plumbing for weeks on end, rendering the unit for occupancy during the course of the renovations which is estimated to take up to five months to complete. For these reasons, the Landlord is seeking to end the tenancy and have the Tenant vacate the rental unit on August 1, 2019.

In response, the Tenant testified that he feels as though the Landlord has been trying to end the tenancy on two previous occasions by serving notices to end tenancy for unpaid rent. The Tenant stated that the Notices have since been overturned. Furthermore, the Tenant referred to a Bylaw Notice which was served to the Tenant by the Landlord. The Tenant stated that he feels the Landlord fabricated the notice.

Lastly, the Tenant stated that he doesn't feel as though the Landlord requires vacant possession of the rental unit to complete the renovations outlined on the Four Month Notice. For these reasons, the Tenant has applied to have the Four Month Notice cancelled.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states that 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord served the Tenant in person with the Four Month Notice on March 30, 2019, with an effective vacancy date of August 1, 2019. The Tenant confirmed having received the notice on the same date. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8)(b) of the Act, a Tenant may dispute the Four Month Notice by making an application for dispute resolution within 30 days after the date the Tenant receives the notice. The Tenant received the Four Month Notice on March 30, 2019 and filed their Application on April 29, 2019. As such, I find that the Tenant disputed within the 30 day time limit under the Act.

According to the Residential Tenancy Policy Guideline #2 (the "Policy Guidelines"); there are 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 this case, I find that the Landlord has provided sufficient evidence to support that the scope of the renovation proposed by the Landlord is significant and it is more likely than not that the Landlord requires vacant possession of the rental unit to perform the renovations. Furthermore, I find that the Landlord has obtained the required permits to complete the renovations. On a balance of probabilities, I find that it is more likely than not that the Landlord has issued the Notice in good faith. The Landlord and the Tenant should be aware that if the Landlord fails to follow through on the intended purpose stated on the Four Month Notice, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

In light of the above, I dismiss the Tenant's Application to Cancel the Four Month Notice dated March 29, 2019 without leave to reapply.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Four Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession according to the effective vacancy date on the Four Month Notice, August 1, 2019 after service on the Tenant pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was not successful with his Application the Tenant is not entitled to recover the filing fee from the Landlord.

### Conclusion

The Tenant's Application seeking cancellation of the Four Month Notice dated March 29, 2019 is dismissed without leave to reapply. The Landlord is granted an order of possession effective at 1:00 P.M. on August 1, 2019, after service on the Tenant. The order should be served to the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 19, 2019

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Residential Tenancy Branch