



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANACA PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL -4M, FFT

### Introduction

This hearing dealt with the tenant's joiner application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's (the landlord's) Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or conversion of a Rental Unit (the 4 Month Notice) issued by the landlord pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties were represented by legal counsel and 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. The parties confirmed that they had exchanged their documentary evidence prior to this hearing.

### Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

Counsel for the tenants made the following submissions. NV submits that the landlord has not issued the notice in good faith. NV submits that the landlord is associated with short term rental companies and may be issuing the notice in attempts to convert the building into something other than noted on the notice. NV submits that the notice should be deemed invalid as the landlord has not obtained all necessary permits. NV

submits that the landlord has only been granted a salvage and abatement permit, not a demolition permit. NV submits that the landlord did not conduct the asbestos testing as required even though the tenants made themselves available as per the landlords notice. NV submits that the notice should be set aside and that all the tenancies continue.

Counsel for the landlord made the following submissions. OM submits that the landlord issued the Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or conversion of a Rental Unit on March 30, 2019 on the ground that the landlord intends to “demolish the rental unit”. OM submits that since the landlord purchased the building in 2017 she has been clear and unwavering in her intention to demolish the building and to replace it with a larger purpose built rental building. OM submits that the landlord has demonstrated good faith throughout by advising the tenants of her intentions from the outset of her ownership and by not raising their rents.

OM submits that as a result of the tenants’ unwillingness to allow the abatement company to conduct their work to test for asbestos, they have purposely delayed the process. OM submits that the landlord has followed the steps outlined to her by a certified professional who works for the city and city employees. OM submits that the landlord was given a salvage and abatement permit and as part of that permit the units will need to be vacant so that walls can be torn down which would leave them uninhabitable. OM submits that the landlord cannot get the “demolition” permit until the site is vacant as per the staged process; which requires the tenants to vacate. OM request that the notice be confirmed and that the landlord be granted an order of possession.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony, submissions and argument of the parties and witness LC, not all details of the respective submissions and arguments are reproduced here. The principal aspect of the tenant’s claim and my findings is set out below.

I must first address the tenants claim that the landlord issued the notice in bad faith. The landlord purchased the building in 2017 and took possession in September 2017. The landlord advised the tenants from the outset that she purchased the property to demolish the existing building and to build a new rental building with more units. The landlord advised the tenants that since the building would be demolished she was not

going to raise the rents at any point. The landlord did not raise the rents. The landlord provided documentation and compelling testimony that the plan was and always has been; to demolish the existing property and build a new rental building. The tenants have not provided sufficient evidence to support their claim of bad faith; accordingly; I find that the landlord issued the four month notice to all tenants in good faith.

When a landlord issues a notice to end tenancy they must provide sufficient evidence to support the issuance of the notice. The landlord issued the notice to end tenancy for the following reason:

- demolish the rental unit.

Residential Tenancy Policy Guideline 2B addresses the issue before me as follows.

## **B. PERMITS AND APPROVALS REQUIRED BY LAW**

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice.

If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.

I find that the landlord has obtained all available permits that they reasonably and practically could obtain when they issued the Four Month Notice to End Tenancy. The landlord provided detailed and clear documentation from the local municipality that they have a “staged” process in that they must complete certain tasks prior to receiving the final demolition permit, however; I find that those “stages” would eventually require vacant occupation to allow the landlord to obtain that final demolition permit. In addition, LC gave clear, concise and credible testimony that she was in contact with the municipality and was following the process as advised to her through a certified professional that worked on behalf of the city. I find that the landlord has done what is required as underlined above.

I also find that the landlord was unable to complete the asbestos testing as a result of the tenants’ actions. I find that the tenants caused an impediment to the process that prevented the abatement company from conducting their testing. Furthermore, I find that the landlord followed the steps as outlined by the local municipality and was ultimately subject to their processes. Based on all of the above, I find that the landlord has taken all reasonable and available steps which are appropriate and which comply with local municipality’s’ processes, accordingly; I hereby dismiss the tenants application to dispute the notice.

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Four Month Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlords are entitled to an Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. Counsel for both parties advised and confirmed that the landlord is content in giving the tenants an extension of time to get their affairs in order. Both counsel advised that they request the Order of Possession take effect at 1:00 p.m. on September 7, 2019, accordingly; that request is granted.

### Conclusion

The landlord is granted an order of possession for all of the units.

The tenants' joiner application is dismissed in its entirety without leave to reapply.

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: July 22, 2019

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Residential Tenancy Branch