



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCENTRE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

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

- An order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("4 Month Notice") pursuant to section 49;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant testified that the landlords were each served with the Notice of hearing packages by registered mail on May 4, 2019. Tracking numbers for each of the mailings is noted on the cover page of this decision. The tenant testified the corporate landlord was served at the address provided on the 4 Month Notice and the other landlord was served at the address provided on the notice of rent increase. The tenant provided a photograph of the package sent to the corporate defendant returned as refused. The tenant testified she sent additional evidence to the same addresses on May 18, 2019 and provided tracking numbers for those mailings, also listed on the cover page. In accordance with sections 89 and 90 of the *Act*, I find the landlords deemed served with the Notice of hearing packages on May 9, 2019, five days after being sent by registered mail.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application?

Should the landlord be required to repair the rental unit?

Background and Evidence

The tenant gave the following undisputed testimony. The tenancy began on June 1, 2009 as a fixed one year tenancy, becoming month to month at the end of the first year. Rent is currently set at \$975.00 per month but is scheduled for an increase to \$999.00 in August.

The rental unit is located on the third floor of a four storey apartment building. The configuration of the unit above the tenant's is different from hers with the balcony of the upper unit situated directly above the tenant's bedroom. Since the fall of 2016, the tenant noticed water drips appearing on the ceiling of her rental unit, specifically in her living room and bedroom. Leaks in the living room were resolved in June of 2018 and the landlord also completed repairs to the bathroom and bedroom between May 2018 and July 2018.

Although the leaks in the living room were fixed, the tenant's rental unit remains cosmetically incomplete as the spackle has not been redone in the living room. A photograph was provided as evidence. There are new leaks appearing in the bedroom closet and on the ceiling of the bedroom discoloring the paint in the rental unit. Photographs of the new damage was also provided. The tenant seeks an order to have this repair made.

The tenant's balcony has been deteriorating since she's moved in. Several letters were exchanged between the parties regarding repairs to the balcony and it is apparent from the letters that the balcony is in an unsafe condition. The landlord has advised the tenant not to use the balcony and the tenant is agreement that it is too dangerous to use. The tenant is seeking an order that the landlord repair the balcony and make it safe to use.

The tenant advised that she has been paying reduced rent for the past two or so years pursuant to an oral agreement she had with the building manager. In evidence, the tenant submitted a letter dated March 26, 2019 from the landlord confirming she has only been paying half rent since January 2017 for the inconvenience of the leaking roof and balcony. As of that date, the tenant has been compensated a total of \$11,312.00. Attached to this letter was the tenant's 4 Month Notice to End Tenancy.

The tenant acknowledges receiving the 4 Month Notice to End Tenancy on March 28, 2019. The Notice states the landlord is ending the tenancy because they are going to

perform renovations or repairs that are so extensive that the rental unit must be vacant. The Notice indicates no permits and approvals are required by law to do this work.

The planned work and details of work were listed in a table on the second page of the Notice. It indicates the landlord plans to:

1. Remove the living room ceiling
2. Remove the balcony
3. Roof replacement
4. Balcony replacement

Further details of the work include:

- Removal of living room and dining room ceiling. Removal of drywall as necessary
- Remove old rot and membrane of balcony as needed to replace rot and deteriorated wood.

The tenant testified she contacted an engineer from the city who advised her permits would likely be required for item 1, while 2 and 4 combined would require a permit. A copy of an email from the city engineer dated May 2, 2019 was provided as evidence.

The tenant filed for dispute resolution to dispute the 4 Month Notice on April 25, 2019.

### Analysis

- Landlord to comply with the Act

The tenant's application sought an order that the landlord comply with the *Act* by 'repairing the rental unit so she could continue to live in it.' As this relief is identical to the relief sought of an order for regular repairs to be done to the rental unit pursuant to section 32, this portion of the tenant's claim is dismissed.

- 4 Month Notice to End Tenancy

The landlord served the tenant with a 4 Month Notice pursuant to section 49(6) of the *Act*, which states:

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;
- b. renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- c. convert the residential property to strata lots under the [\*Strata Property Act\*](#);
- d. convert the residential property into a not for profit housing cooperative under the [\*Cooperative Association Act\*](#);
- e. convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- f. convert the rental unit to a non-residential use.

Pursuant to section 49(7), a tenant may dispute a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice. The tenant received the 4 Month Notice on March 28<sup>th</sup> and filed for dispute resolution on April 25<sup>th</sup>. I find the tenant has applied to dispute the Notice within the time limits provided by section 49(7).

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 if the tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the Notice, namely that the landlord requires vacant possession of the rental unit to perform renovations or repairs that are so extensive that the rental unit must be vacant.

Accordingly, in the absence of any testimony or documentary evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the 4 Month Notice. The 4 Month Notice to End Tenancy dated March 26, 2019 is cancelled and of no further force or effect.

- Regular repairs to be made to the rental unit

The tenant has provided compelling evidence to indicate her rental unit suffers from ceiling leaks, discoloration to the paint and most importantly, a dangerous balcony. From the evidence provided and her undisputed testimony, I am satisfied the landlord must perform those repairs sought by the tenant.

I order, pursuant to section 32 of the *Act* that the landlord provide the tenant with a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The landlord is to repair or replace the tenant's balcony and fix the ceiling in the tenant's bedroom, closet and living room.

The tenant has provided evidence that she has been paying a reduced rent since January 2017 due to the reduction in the value of her tenancy agreement. Pursuant to section 65(1)(f) of the *Act*, I order that the tenant is entitled to continue to pay half the rate of her monthly rental, subject to any rent increases permitted under the *Act* until the repairs are made to the ceiling and balcony.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

The landlord's Notice to End Tenancy is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

The landlord is required to repair or replace the tenant's balcony and fix the ceiling in the tenant's bedroom, closet and living room in accordance with section 32 of the *Act*.

Pursuant to section 65(1)(f) of the *Act*, the tenant is entitled to continue to pay half the rate of her monthly rental, subject to any rent increases permitted under the *Act* until the repairs are made to the ceiling and balcony.

The tenant was awarded the \$100.00 filing fee. In accordance with section 72 of the *Act*, I order that the tenant is to deduct \$100.00 from a future rent payment.

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 13, 2019

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Residential Tenancy Branch