



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1112 BROUGHTON PROJECT GP LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNL-4M FFT

### Introduction

This hearing dealt with the tenants' applications pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellations of the landlord's Four Month Notices to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "Four Month Notices") pursuant to section 49; and
- authorization to recover their filing fees for these applications pursuant to section 72.

The tenants' advocate and tenants R.T., K.L., L.R., K.D.D.S., C.M., C.L.M., P.D.T., G.L.W., P.A.G. and J.M.R. attended the hearing on behalf of the tenants. The landlord's lawyer, T.B. and the landlord's representative, K.S., appeared on behalf of the landlord. All of the parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenants' Notices of Hearing and Applications for Dispute Resolution. None of the parties raised issues of service. I find the parties were served in accordance with the *Act*.

### Preliminary Matter: Stipulations

The parties all stipulated to the following facts and procedural matters:

- The landlord issued a Four Month Notice month notice to each of the tenant applicants herein on June 9, 2019.

- The landlord served each and all of the Four Month Notices to each of the tenant applicants herein by posting the notices on the tenants' doors on June 10, 2019.
- The tenant applicants herein each received the Four Month Notices.
- The tenant applicants herein were each properly served with the Four Month Notices.
- Each and all of the Four Month Notices state a move-out date of October 31, 2019.
- Each and all of the tenant applicants herein all filed timely applications to dispute the Four Month Notices.
- Each and all of the tenants served the landlord with their applications to dispute the Four Month Notices.

Based upon the stipulations of the parties, I accept the above statements as proved.

Issue(s) to be Decided

Are the tenants entitled to the cancellation of the landlord's Four Month Notice pursuant to section 49?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

By oral testimony and submitted affidavit, the landlord testified that the property is a 1953 structure with out-of-date safety features. The landlord testified that they purchased the property on June 19, 2017 and that they retained multiple consultants to consider repairs and upgrades. The landlord's consultants provided reports recommending necessary improvements to the fire safety system and seismic upgrades.

During their investigation, one of the landlord's consultants detected asbestos under the carpet in the ground level of the building and under the sink in one of the rental units.

The municipality issued a building permit on May 23, 2019 (the "Building Permit"). The Building Permit stated the follow as the Project Description:

Interior and exterior alterations to provide cosmetic alterations to each dwelling unit in this multiple dwelling building on this site.

Proposed work includes removal of kitchen millwork, appliances, and removal of existing bathroom fixtures. Voluntary sprinklering of the entire building with single stage fire alarm proposed

The Building Permit also stated that, "- The applicant is advised to obtain a separate Sprinkler Permit for any work undertaken to the existing sprinkler system in this building."

The Building Permit stated the following on the second page under the heading Inspections:

...	
Electrical Permit	Prior to Completion
Sewer & Water Connection Permit	Prior to Completion
Sprinkler Permit	Prior to Completion
Plumbing Permit	Prior to Completion

The landlord also provided documentation from the municipality explaining how to obtain electrical permits, sprinkler permits and plumbing permits.

The landlord issued the Four Month Notices on June 9, 2019 and served the notices on June 10, 2019. The Four Month Notices stated that the landlord intended to perform the following work which required vacant occupancy:

Under City of [redacted] Permit obtained: #1. Fire Sprinkler Suppression System throughout all suites and common areas. #2 New Fire Detection System and required devices, #3 Fire Code compliant doors and hallway/common areas fire separations; including removing all storage lockers to add fire rating materials to ceiling and walls adjacent to public corridors and adjoining suites.

Other Work Items: #4. New 6" main Water Supply Pipe/System. #5. New Boiler and Domestic Hot-Water systems, #6. Remediation of environmental hazardous materials (asbestos). #7. Additional Plumbing and Electrical work and new components required as part of the new systems and rehabilitation process. #8. Seismic work to remove old brick chimney structure. #9 Replacement of all roofing systems. #10. Interior repairs and updating of the suite interiors in conjunction with the major work items. #11. Lighting systems conversion to LED and related electrical work. #12 Laundry Room rehabilitation.

The landlord testified that they had obtained all necessary permits for the project even though they had not yet obtained the Electrical Permit, the Sewer & Water Connection Permit, Sprinkler Permit and the Plumbing Permit. The landlord testified that these are "just trade permits" and they would be acquired during the course of the project.

The landlord did not have permits for the proposed roofing or seismic work. The landlord testified that permits were not required for those services.

The landlord testified that vacant occupancy is required to safely perform the planned work. The landlord testified that the work would require the building to be without sprinkler service while the work was being performed. In addition, the landlord testified that this building has a single access corridor and it would be unsafe and impermissible for construction to block the access corridor with tenants residing in the property.

The landlord produced an opinion letter from an architect that stated that the proposed fire safety modifications would take 8 to 12 months. The landlord testified that it was not feasible for the tenants to find alternative accommodations for that long. The landlord requested an order of possession.

The tenants argued that the landlord has not acquired all the necessary permits which is a requirement for a Four Month Notice. The tenants argued that the landlord has not obtained several of the permits required by the municipality.

The tenants also argued that the renovations were not so extensive such that the landlord would require vacant occupancy to complete the renovations. The tenants presented an expert witness regarding the necessity of vacating the building. The witness testified that it was preferable to have the building vacant before performing this

work. The witness testified that the work could be performed on a floor-by-floor basis if the contractors used one entrance and a separate entrance was reserved for the tenants. The witness admitted that he was not familiar with this building and he did not have an opinion as to whether a floor-by-floor renovation would be feasible for this building.

In addition, the tenants argued that the landlord was not acting in good faith. The tenants argued that the lack of good faith was demonstrated by the landlord's failure to obtain all required permits and by stating a larger scope of work in the Four Month Notice than it is stated in the Building Permit. The tenants argued that this raised an inference that the landlord may not actually intend to perform all of the work indicated in the Four Month Notice. The tenants also argued that lack of good faith was exhibited by the landlord being selectively unavailable for maintenance, by reduction of services such as not providing functioning laundry machines and the discontinuation of cable service, and inadequate building security.

Eight of the tenants testified and all of them stated that they could find alternative accommodations for as long as eight to twelve months to continue the tenancy if necessary.

### Analysis

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.

*Residential Tenancy Branch Policy Guideline 2B* discusses the application of section 49(6) and states the following:

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.

In this matter before me, the landlord set out multiple planned renovations in the Four Month Notice requiring vacancy which were not set out in the Building Permit. Specifically, the Four Month Notice stated that the landlord needed vacancy to change the water supply pipe, replace the boiler and hot-water system, remediate asbestos, perform seismic work, and replace the roof. Despite listing these planned renovations as requiring vacancy on the Four Month Notice, these projects were not listed on the Building Permit.

The landlord testified that all required permits had been retained. However, *Residential Tenancy Branch Policy Guideline 2B* states:

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.

I find that the landlord has not provided sufficient evidence to establish that permits were not required for the planned work which was not listed on the Building Permit. The landlord has not provided evidence from a certified tradesperson or a copy of a current building bylaw which evidences that permits are not required for these planned services.

As such, I find that the landlord has failed to provide sufficient evidence to prove on a balance of probabilities that the landlord has complied with the requirements set forth in section 49(6) of the Act. Accordingly, I grant the tenant's applications to cancel the Four Month Notices. The Four Month Notices are of no force or effect. The applicants' tenancies shall each continue until they end pursuant to the Act.

Since the tenants have prevailed in this matter, I grant each of the applicants' request for reimbursement of their filing fees pursuant to section 72(1) of the Act. To satisfy this order, each of the tenants may deduct \$100.00 from ONE future rent payment.

Conclusion

I grant the tenants' applications to cancel the Four Month Notices. The Four Month Notices are of no force or effect. The applicants' tenancies shall each continue until they end pursuant to the Act.

I grant each of the applicants' request for reimbursement of their filing fees pursuant to section 72(1) of the Act. To satisfy this order, each of the tenants may deduct \$100.00 from ONE 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: August 30, 2019

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Residential Tenancy Branch