



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M, MNDCT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”), and for monetary compensation.

The Tenant and both Landlords were present for the duration of the teleconference hearing. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence package. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters

The Tenant applied to dispute a Four Month Notice and for monetary compensation. As stated in rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Due to the urgent nature of a dispute over a notice to end tenancy, I exercise my discretion to dismiss the Tenant’s monetary claim with leave to reapply. This decision will address

the dispute over the Four Month Notice only. The parties were informed of this at the hearing.

### Issues to be Decided

Should the Four Month Notice be cancelled?

If the Four Month Notice is upheld, are the Landlords entitled to an Order of Possession?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began around May 2017. Current rent in the amount of \$595.00 is due on the first day of each month. A security deposit of \$300.00 was paid at the start of the tenancy.

The Landlords testified that they served the Tenant in person with the Four Month Notice on May 15, 2019. The Tenant confirmed receipt of the notice on May 15, 2019.

A copy of the Four Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- I am ending your tenancy because I am going to:
  - Convert the rental unit to a non-residential use

The effective end of tenancy date was stated as September 30, 2019.

The Landlords testified that they have a home-based business that they used to operate out of the lower level unit which the Tenant now rents. Due to family circumstances, they stated that they moved the business into an upstairs bedroom of the home but are now ready to expand the business and therefore require more space.

The Landlords stated that they plan to paint the rental unit and complete some mould remediation but will not be making any alterations to the rental unit. They noted that they own the home and would like the space on the lower level for the business, as it was used in the past. The Landlords stated that one of them is now semi-retired which makes it difficult for the other Landlord to have clients in one of the upstairs rooms and would prefer to have a private space downstairs.

The Landlords stated that they have had a business license since 2012 and submitted a copy of their current license. The license states that it is effective from January 1, 2019 to December 31, 2019 and states the address of the residential property as the location of business. It is noted on the business license that the issuance of a license does not confirm that the proper zoning for the location of the business is in place. The Landlords also submitted into evidence a business card which notes the business name and the name of one of the Landlords. The business card indicates that the Landlord provides services such as counselling and massage.

The Landlords submitted into evidence zoning information for their city which they stated was signed by the mayor. A business card of the mayor was also provided. On the zoning information the following is written:

*This confirms that [the Landlord's] property conforms with bylaws.*

This statement was undated.

The Tenant testified as to his belief that the Landlords do not meet the zoning requirements to have a home-based business in the rental unit. He also questioned that the Landlords were expanding the business as he noted that he has not seen an increase in clients attending the home for the business.

The Tenant estimated that the Landlord is moving the business from an approximately 80 square foot bedroom upstairs to 800 square feet downstairs which he noted was a large expansion. The Tenant also noted that the upstairs of the home is approximately the same size as the rental unit, other than a small expansion of just over 200 square feet that is upstairs as well. As such, the Tenant stated his position that the Landlords have not met the zoning requirements to operate their business in the rental unit.

The Tenant submitted a copy of the city zoning bylaws and referenced section 4.13(8) which states the following regarding home based businesses:

- *In the zone permitted, a home based business use shall require:*
  - *That not more than 40% of the gross floor area of the residential dwelling up to a total maximum area of 80 square metres (861 square feet) be used for the home occupation use*

The Tenant also referenced the zoning information submitted in the Landlords' evidence and stated that while signed by the mayor, he did not sign regarding the above-noted section confirming that they have met this zoning requirement.

The Tenant also referenced an advertisement submitted as an example of commercial space available for rent in the community in which the Landlord could rent and use for the business. The Landlords stated that they own their home and should be able to use the lower level space for their business, as they have done in the past.

The Tenant questioned that no zoning officer had attended the rental unit. The Landlords responded and stated that they did not need a current inspection as they have used the space previously for the business. However, they stated that they can have an officer visit the home if required.

The Landlords stated their intent to use the whole rental unit to set up space for various individual client services, as well as use the main living space for group sessions.

### Analysis

The Landlords served the Tenant with a Four Month Notice on May 15, 2019 pursuant to Section 49(6)(f) of the *Act* due to plans to convert the rental unit to non-residential use. Section 49(6) of the *Act* states the following:

(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:

- (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.

As stated in Section 49(8)(b) of the *Act*, a tenant has 30 days in which to dispute a Four Month Notice. As the Tenant filed the Application for Dispute Resolution on June 11, 2019, I find that he applied within the allowable timeframe. Therefore, the matter before me is whether the Four Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. As such, in this matter the Landlords have the burden of proof.

The Landlords submitted a copy of a business license valid until December 31, 2019, which states the location of the business of the address of the residential property. As stated on the license, this does not confirm that zoning requirements have been met.

The Landlords also submitted the zoning bylaws that they stated were signed by the mayor confirming that the property meets the bylaw requirements. However, although the Tenant did not dispute that this document was signed by the mayor, I note that the statement was undated and did not include specific information such as what areas of the property the Landlord may operate the business in or that the specific zoning requirements have been met.

It is unclear as to whether this was signed when the business was operating in an upstairs bedroom or whether the Landlord is able to operate the business anywhere on the property. While the zoning information was current as of January 2019, I find the signature to be unclear as to whether the current plan to operate in the area of the rental unit meets the zoning requirements. I also note that while the signed statement references bylaws, it does not clarify whether there are further approvals or permits required to operate a business in the area of the rental unit.

As stated in Section 49(6), a landlord may end the tenancy for converting the rental unit to non-residential use if they have the required permits and approvals. As stated in *Residential Tenancy Policy Guideline 2B*, a landlord must have the necessary permits and approvals prior to giving notice to the tenant and must be able to provide evidence that establishes what the required approvals and permits are.

While the Landlords provided evidence of a current business license, as stated on the license this is not proof that the zoning requirements have been met. They also submitted a print out of the zoning requirements that was signed, but I find insufficient

evidence to establish when this was signed and what the signature is referencing. I also do not find that the information establishes that there are no further approvals required to operate the business in the rental unit.

The Tenant also brought into question whether the specific zoning requirements have been met and I find that the Landlords have the onus to establish that they have met the specific zoning requirements and have the necessary approvals. In the absence of any further required permits or approvals, it is the Landlords' responsibility to provide evidence that would establish this so that it is clear that the necessary requirements have been met and/or that no further approvals or permits are required by law.

As such, based on the testimony and evidence of both parties, I find that there are questions remaining as to whether all of the required permits and approvals have been obtained as required by Section 49(6) of the *Act*. Therefore, I am not satisfied that the Landlords have met the burden of proof to establish that the Four Month Notice is valid in accordance with Section 49(6) of the *Act*. As such, the Tenant's application to cancel the notice is successful. The Four Month Notice dated May 15, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

### Conclusion

The Four Month Notice dated May 15, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 08, 2019

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Residential Tenancy Branch