



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, OLC, FFT

### Introduction

On June 25, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Notice”) pursuant to Section 49 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlords to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with J.S. attending as an advocate for the Tenant. A.C. and O.C. attended the hearing as agents for the Landlords. C.C. attended the hearing as a witness for the Landlords. All in attendance provided a solemn affirmation.

The Tenant advised that she served each Landlord with the Notice of Hearing package by registered mail on July 4, 2019 and O.C. confirmed that the Landlords received these packages. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlords on July 31, 2019 and O.C. confirmed that they received this evidence. As this evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenant’s evidence and will consider it when rendering this decision.

O.C. advised that the Landlords’ evidence was served to the Tenant on August 7, 2019 by registered mail and the Tenant confirmed receipt of this evidence on August 15, 2019. Based on the undisputed testimony, I am satisfied that service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted all of the Landlords’ evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 a 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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to an Order for the Landlords to comply?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 1991. Rent was currently established at \$1,716.00 per month, due on the first day of each month. A security deposit of \$450.00 was paid.

O.C. advised that the Notice was served by registered mail on May 23, 2019 and the Tenant confirmed that she received this Notice on May 28, 2019. The reason the Landlord served the Notice is to “perform renovations or repairs that are so extensive that the rental unit must be vacant.” As well, the Landlord checked off the box indicating that “I have obtained all permits and approvals required by law to do this work.” The Notice indicated that the effective end date of the tenancy would be September 30, 2019. The Landlord detailed the work that would be completed on the Notice as follows:

- Relocate bathroom and 2 more additional bathrooms
- Relocate kitchen
- Install new flooring
- Replace all existing windows with double glazed vinyl windows
- Replace existing heating system with new energy heating
- Improve insulation value

C.C. was contracted on April 8, 2019 to complete the renovations and he reiterated that the above work would be undertaken. He advised that these were substantial and extensive renovations. He stated that the property was built in 1995 and was constructed with hazardous materials. Therefore, it was “not a good idea” to have the Tenant live in the house while the renovations were undergoing. He submitted that in this particular municipality, a building permit is required before commencing any renovations. Then, once there is vacant possession of the property, the other necessary permits can be acquired and it “only takes a few hours” to obtain these other permits. He stated that without confirmation of a vacant possession date, these other permits cannot be obtained. He advised that the reason for this is that the sub-trades are “busy” and will not commit to applying for these permits without a confirmed start date, and this is a “normal” practice. A copy of the contract for the renovation work was submitted as documentary evidence to support the Landlord’s position.

O.C. advised that the only permit required is the building permit, which the Landlord obtained on April 4, 2019. He echoed C.C.’s testimony that the renovations are extensive and vacant possession is required to complete the work. He stated that the Landlords are willing to do everything they can to get the renovations completed but they are unable to obtain the sub-trade permits prior to obtaining vacant possession. He advised that the expiration date of the building permit coincides with the effective end date of the Notice, and that once the Tenant vacates the rental unit, the renovations will commence immediately, and then the sub-trade permits will be applied for. While he insisted that vacant possession was necessary before obtaining the sub-trade permits and this was a “normal procedure” in this municipality, he then contradictorily stated that the Landlord was “not able to take the risk” of applying and paying for the sub-trade permits prior to knowing if they will have vacant possession.

J.S. advised that contrary to the Notice, the Landlords did not have all the permits in place prior to serving the Notice. He also stated that at least the first four jobs detailed on the back of the Notice can be completed without vacant possession of the rental unit. In addition, he noted that these six jobs are not consistent with and were less extensive

and substantial compared to the work that was approved in the building permit or the blueprint submitted as documentary evidence. He advised that any gas, electrical, plumbing, or relocation of a furnace requires permits to be obtained first. As well, he stated that the building permit even indicated that a plumbing permit was required.

He pointed to Policy Guideline 2(b) which states that “a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice.” He also referenced a Supreme Court decision which noted that “a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty.”

He speculated that it seemed odd that if the Landlords had the building permit on April 4, 2019 and that was all that was required by the municipality to complete the renovation, then why did he wait until May 23, 2019 to serve the Notice. Based on the blueprint design of having a bathroom in each bedroom, he speculated that the Landlords were attempting to “renovict” the Tenant to create some sort of rooming house and capitalize on increasing the rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. In addition, Policy Guideline 2(b) states that “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.”

When reviewing the testimony of the Landlords’ agents, I am not satisfied that the building permit was all that was required prior to serving the Notice. I do not find that it is logical that the Landlords could proceed with such extensive renovations and only be required to obtain any other relevant permits once vacant possession has been obtained and the work has started. Based on the questionable and contradictory testimony of O.C., I find it more likely than not that the reason the Landlords did not obtain any of the other permits is because the Landlords did not want to risk paying for

them prior to having vacant possession, which is what O.C. stated but then subsequently recanted.

Furthermore, even if it were the case that the municipality only required obtaining the other permits after vacant possession had been obtained and the renovations had commenced, I do not find from the Landlord's scant evidence that there is any compelling documentation, policy, or procedure from the municipality to show that the Landlords had completed all steps possible but were unable to obtain the required permits.

Based on the totality of the evidence before me, I find that the Landlords did not obtain all of the necessary permits and approvals required by law to complete the renovations prior to service of the Notice. Consequently, I am not satisfied of the validity of the Notice, and I find that the Notice of May 23, 2019 is of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. The Tenant is permitted to withhold this amount from a future month's rent.

### Conclusion

Based on the above, I hereby order that the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit of May 23, 2019 to be cancelled and of no force or effect.

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 21, 2019

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Residential Tenancy Branch