



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-4M, FFT

### Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties 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.

As the tenant confirmed that they were handed the 4 Month Notice by the landlord on July 31, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail well in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord confirmed that they had received the tenant's written evidence, I find that the tenant's written evidence was served to the landlord in accordance with section 88 of the *Act*. The tenant testified that only the landlord's Salvage and Abatement Permit was provided to the tenant, although the tenant was aware that the landlord had obtained a subsequent Sewer and Water Permit. I have considered both of the landlord's Permits in reaching my decision as I consider them sufficiently served for the purposes of the *Act*.

### Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenant said that this tenancy began about twenty-two years ago. Current monthly rent is set at \$268.00, payable in advance on the first of each month.

The landlord's 4 Month Notice was issued apparently for the proposed demolition of this rental dwelling, with an effective date of November 30, 2019. No reason was identified on the copy of that 4 Month Notice entered into written evidence by the tenant. The tenant also entered into written evidence a copy of a previous 4 Month Notice of April 30, 2019, which sought an end to this tenancy by August 31, 2019, for the demolition.

The tenant applied to cancel the current 4 Month Notice because they maintained that the landlord had not obtained all of the necessary permits from the municipality in order to demolish the rental unit and construct a new dwelling.

The landlord entered into written evidence copies of the Salvage and Abatement Permit issued by the municipality on August 22, 2019, and the Sewer and Water Permit issued on October 3, 2019.

### Analysis

Although the tenant applied to cancel the 4 Month Notice, the burden of demonstrating that an end of tenancy is required rests with the landlord, provided the tenant applies to cancel the 4 Month Notice within the time frame established in section 49 of the *Act*.

Paragraph 49(6)(a) of the *Act* reads in part as follows:

**49** (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;

Section 49(7) of the *Act* establishes that a 4 Month Notice must comply with section 52 of the act as to the form and content of the Notice.

In this case, the landlord did not select any of the boxes provided in the 4 Month Notice form, and as such the landlord's 4 Month Notice does not comply with the requirements of section 49(7) of the *Act*. Even if the Notice had correctly identified the demolition of the rental unit as the reason for needing to end this tenancy, there is clear evidence that the landlord did not have all of the necessary permits in place at the time the 4 Month Notice was issued to enable the landlord to end this tenancy pursuant to section 49(6) of the *Act*. For these reasons, I allow the tenant's application to cancel the 4 Month Notice and set aside the landlord's 4 Month Notice.

Since the tenant has been successful in this application, I allow the tenant to obtain the recovery of the \$100.00 filing fee for this application from the landlords who issued the 4 Month Notice.

### Conclusion

I allow the tenant's application to cancel the 4 Month Notice. The 4 Month Notice is of no continuing force or effect and this tenancy continues until ended in accordance with the *Act*.

As the tenant has been successful, I issue a monetary award in the amount of \$100.00, to enable the tenant to recover the filing fee for this application. As this tenancy is continuing, I order the tenant to reduce a future monthly rent payment by \$100.00 to implement this monetary award.

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: October 22, 2019

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Residential Tenancy Branch