



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL RP FF

### Introduction

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

- cancellation of a Four Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Four Month Notice);
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's Four 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?

### Background & Evidence

The rental unit is two-bedroom, two-bathroom ground floor unit in an old motel converted to apartments. The tenancy began in 2014. The current monthly rent is \$597.00 and is payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with a Four Month Notice on August 21, 2019. The tenant's application to dispute the Four Month Notice was filed within the time period required under the Act. The Four Month Notice was issued on the following ground as per section 49(6)b of the Act:

- *The landlord has all necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

As an attachment to the Four Month Notice, the landlord listed various repairs required to be completed including plumbing and electrical work. The attachment indicates that two contractors have advised that the work would take at least a month or more and that they required vacant possession to do the work. In the written submissions, the landlord acknowledges that permits would be required to carry out the plumbing and electric work, but they have not yet been requested as the landlord is not yet aware of the extent of the work. The landlord submits that the tenant prevented access to the unit after the Four Month Notice was issued so the landlord was not able to submit evidence as to the extent of the work required.

The tenants are disputing the Four Month Notice on the grounds that it was not issued in good faith. The tenant submits that the landlord is only seeking to obtain an increased rent from the rental unit by performing unnecessary repairs while avoiding doing required repairs.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Four Month Notice by making an application for dispute resolution within thirty days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Four Month Notice.

The landlord's own submission was that the planned renovation or repair work would require permits from the city. The landlord did not obtain the necessary permits prior to issuing the Four Month Notice as required by section 49(6)b of the Act. The landlord's contention that the tenant prevented access in order for the landlord to gather evidence in support of the Four Month Notice is absurd as permits are required to be in place prior to issuing the Notice. The tenant allegedly prevented access after the Notice was issued. The landlord ought to have taken the time to plan and assess the amount of work required and gather any necessary permits prior to issuing the Four Month Notice.

Accordingly, the Four Month Notice to End Tenancy dated August 21, 2019, is hereby cancelled and of no force or 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 from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

### Conclusion

I allow the tenant's application to cancel the landlord's Four Month Notice, dated August 21, 2019, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: November 22, 2019

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Residential Tenancy Branch