



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0930100 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL-4M, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 24, 2019, wherein the Landlord requested an Order of Possession based on an undisputed 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit issued on August 27, 2019 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on December 9, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by L.L., a director of the company, who was assisted by an interpreter, K.K., and a lawyer, D.N. The Tenant's spouse, Q.Z., appeared on her behalf.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence indicating that this tenancy began April 1, 2015; at that time rent was \$1,400.00 per month and the Tenant paid a \$700.00 security deposit.

The Landlord's representative testified that the rental unit is currently a single-family dwelling and it is the Landlord's intention to turn the rental unit into a two-unit legal rental dwelling.

The Landlord issued the Notice on August 27, 2019. The Landlord's representative testified that it was personally served on the Tenant on August 28, 2019 by the Landlord's real estate agent, L.F. The reasons cited on the Notice were that the Landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant for four months. The Landlord also provided details of the permits and approvals obtained for the intended work on the Notice. In evidence before me were copies of the Building Permit and the Plumbing Permit. The Landlord's counsel stated that they estimated the work may cost in the neighbourhood of \$90,000.00.

The Tenant did not apply to dispute the Notice.

In response the Tenant's spouse confirmed that they received the Notice in August 2019; he further confirmed that they did not apply to dispute the Notice. He stated that the Landlord tried to evict them the year before and they did not have to move out and he believed that the same would happen this time.

The Tenant's spouse stated that the tenancy began approximately 7-8 years ago. He further testified that the Tenant has stage four cancer and is in critical condition. He confirmed that she is in no condition to move.

## Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

A landlord may regain possession of a rental unit provided they do so in accordance with the *Residential Tenancy Act*. A landlord may end a tenancy when extensive renovations or repairs are contemplated, and the rental unit must be vacated to accomplish this work. This is provided for in section 49 of the *Act* which reads in part as follows:

### **Landlord's notice: landlord's use of property**

...

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

...

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

...

(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.

(7)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8)A tenant may dispute

(a)a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

I find the Landlord served the Notice on the Tenant on August 28, 2019. I further find that the Tenant did not apply to dispute the Notice.

While the Tenant's circumstances are extremely unfortunate, in failing to dispute the Notice, the Tenant is conclusively presumed, pursuant to section 49(9), to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit.

I have reviewed the Notice and find it complies with section 52 of the *Act* in terms of form and content. I am also satisfied the Landlord intends to renovate the rental unit in a manner which requires vacant possession. As such, and pursuant to section 55, I grant the Landlord an Order of Possession. This Order shall be effective December 31, 2019 (the effective date of the Notice). The Landlord must serve the Notice on the Tenant and may file and enforce the in the B.C. Supreme Court.

Having been successful in their Application, the Landlord is also entitled to recover the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the Landlord to retain \$100.00 from the Tenant's security deposit.

Conclusion

The Tenant failed to dispute the Notice and is conclusively presumed to have accepted the end of the tenancy. The Landlord is granted an Order of Possession and may retain \$100.00 from the Tenant's security deposit as recovery of the filing fee.

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: December 11, 2019

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Residential Tenancy Branch