



# 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 a 4 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of materials was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

The rental unit is a suite in a duplex building. The landlord issued a 4 Month Notice to End Tenancy for Landlord's Use dated October 30, 2019. The reason provided on the notice is that the landlord intends to perform renovations or repairs that are so extensive

that the rental unit must be vacant. The planned work is noted to be sewer line and bathroom upgrades.

The landlord testified at the hearing that there have been issues with the sewer line and water backing up periodically. The landlord said that they intend to perform major repairs which will require the rental suite to be vacant. The landlord did not provide any documentary evidence in support of their testimony and expressed confusion about what evidence they ought to have provided.

### Analysis

Section 49(8)(b) provides that a tenant may dispute a notice given by a landlord to end a tenancy to renovate or repair the rental unit in a manner that requires the rental unit to be vacant, by filing an application within 30 days of receiving the notice. The parties agree that the 4 Month Notice was served on the tenant on October 30, 2019. The tenants filed their application to dispute the notice on November 28, 2019, within the timeline provided under the Act.

When a tenant disputes a Notice to End Tenancy the burden of proof is on the landlord. The landlord must show, on a balance of probabilities, that the tenancy should end for the reason stated on the Notice.

The landlord submitted no documentary evidence, gave some unsupported testimony and expressed confusion as to what materials they ought to have submitted. The landlord requested guidance on what evidence they are required to submit that would allow them to be successful at this hearing.

I find that the landlord's request for guidance misconstrues the role of an arbitrator at a dispute resolution hearing. An arbitrator is a neutral decision-maker and it would be contrary to the principles of procedural fairness and natural justice if they were to advise a party on evidence they ought to submit, make arguments or submissions for a party or to present evidence on a party's behalf. I find that instructing the parties on the burden of proof to be sufficient.

Based on the totality of the evidence I find that the landlord has not met their evidentiary burden. The landlord gave general testimony about the nature of the work they intend to perform but provided no documentary evidence showing that necessary permits have been obtained. There is little evidence to support the landlord's intention. The landlord

gave little evidence about the timeline for the work to be performed or the scope of the work. The landlord has not provided evidence to demonstrate that these renovations or repairs cannot be conducted without ending the tenancy. There is little evidence that the tenants could not vacate during the work and return to the rental unit.

Based on the totality of the evidence I find that the landlord has not met their evidentiary burden to demonstrate that there is a basis for this tenancy to end as stated on the 4 Month Notice. Consequently, I allow the tenants' application to cancel the notice to end tenancy.

The 4 Month Notice of October 30, 2019 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application they may recover the filing fee from the landlord. As this tenancy is continuing the tenants may satisfy their monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

### Conclusion

The 4 Month Notice of October 30, 2019 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: January 17, 2020

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Residential Tenancy Branch