



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL-4M, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 1, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a Four Month Notice to End Tenancy for Demolition (the "Four Month Notice") dated November 13, 2019; and
- an order granting the return of the filing fee.

The hearing was scheduled for 11:00 AM on May 5, 2020 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenants by placing it in the mail slot on March 1, 2020. Based on the oral and written submissions of the Applicant, and in accordance with section 71 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on March 4, 2020, the third day after delivery. The Tenants did not submit documentary evidence in response to the Application.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules

of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on the Four Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord submitted a copy of the tenancy agreement which confirms that the tenancy began on May 1, 2016. Currently, the Tenants pay rent in the amount of \$2,225.00 to the Landlord on the first day of each month. The Tenants did not pay a security deposit. The Landlord stated that the Tenants continue to occupy the rental unit.

The Landlord stated that she served the Tenants in person with the Four Month Notice on November 13, 2019, with an effective vacancy date of March 15, 2020. The Landlord provided a signed proof of service in support. The Landlord's reason for ending the tenancy on the Four Month Notice is to;

“demolish the rental unit.”

The Landlord provided a copy of the Four Month Notice in support. I note that the Four Month Notice requires the Landlord to indicate that the Landlord has obtained all permits and approvals required by law prior to conducting the demolition of the rental property.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6)(a) of the *Act* states that 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 demolish the rental unit.

The Landlord served the Tenant in person with the Four Month Notice on November 13, 2019, with an effective vacancy date of March 15, 2020. Pursuant to Section 88 and 90 Act, I find that the Tenant is deemed served the Four Month Notice on November 13, 2019.

According to the Residential Tenancy Policy Guideline 2B;

When ending a tenancy under section 49(6), a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose.

I note that Section 55 of the Act states that in order for a Landlord to be granted an order of possession, the Landlord’s notice to end tenancy must comply with Section 52 of the Act relating to form and content.

Section 52 of the Act States; In order to be effective, a notice to end a tenancy must be in writing and must;

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy,***

*(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*  
*(e) when given by a landlord, be in the approved form.*

In this case, I find that the Landlord has not indicated on the Four Month Notice that they had all necessary permits and approvals that are required by law before they gave the tenant the Four Month Notice. Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate that they have obtained the required permits to complete to demolition of the rental property.

I find the Four Month Notice does not comply with Section 52 of the Act. In light of the above, I cancel the Four Month Notice, dated November 13, 2019. I order that the tenancy continue until ended in accordance with the Act. As the Landlord was not successful with the Application the Landlord is not entitled to recover the filing fee.

### Conclusion

The Landlord's Application is dismissed. The Four Month Notice issued by the Landlord dated November 13, 2019 is cancelled. The tenancy will continue until 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: May 05, 2020

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Residential Tenancy Branch