



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL-4M**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a four month notice to end tenancy for demolition, renovation, repair or conversion of rental unit pursuant to sections 49 and 55.

The landlord attended the hearing, represented by property manager, TB ("landlord"). The tenant attended the hearing, assisted by an advocate, TL, and his sister, PH who attended in support. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Issue

During the hearing, the landlord noted that I had been appointed to arbitrate a previous hearing with this landlord and a different tenant. The landlord did not express any concern with me being appointed to arbitrate this hearing and I did not recuse myself from doing so in accordance with Residential Tenancy Branch Policy Guideline PG-10 [Bias and Conflict of Interest] which states: *The fact that one or both of the parties may have appeared before the arbitrator previously, or that the arbitrator previously denied an application by one of the parties, does not by itself support a claim of bias.*

### Issue(s) to be Decided

Should the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("Notice") be upheld or cancelled?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. This tenancy began in March 2014. The landlord purchased the entire building from the previous building owner in August of 2019. Rent is currently set at \$738.00 per month and the landlord is holding the tenant's security deposit of \$325.00 collected at the commencement of the tenancy. The landlord served the tenant with the Notice on March 3, 2020 by posting it to the tenant's door. The tenant acknowledges receiving it that day.

The landlord provided the following testimony. The building has 43 units, some of which are finished being renovated, some of which still require renovations. Each unit requires approximately \$8,000.00 to \$10,000.00 worth of renovations to be completed. The landlord provided photographs of another unit undergoing renovations as evidence.

This tenant's unit is located below the building's heating broiler and was flooded when the building's broiler burst a pipe. There was a half an inch of water in the unit from the flood, which soaked the ceiling and floors. The landlord used a wet/dry vacuum to remove the standing water, however no professional remediation was done. The landlord stated he's surprised the tenant is not yet sick from the mold caused by the flood. During his testimony, the landlord stated that if the tenant wants to stay in the unit and get sick, that's his business he's welcome to stay, that's up to him. He's fed up, sick of fighting with this tenant and the others.

The landlord stated that at the time of the flood, this tenant's unit was not yet slated for renovations. Many of the units have had their renovations done and that due to the timing of the renovations, this tenant got his Four Month Notice to End Tenancy in early March. The landlord testified that the rental unit will require a 'full gutting'. The Notice provided as evidence indicates the landlord is going to end the tenancy because he is going to:

*Perform renovations or repairs that are so extensive that the rental unit must be vacant.*

The work the landlord is planning to do is detailed as:

| Planned Work                  | Details of work          |                          |
|-------------------------------|--------------------------|--------------------------|
| Gutting unit for a full reno. | Replace flooring         | Replace new tub & shower |
|                               | All baseboards           | Trim kit shower          |
|                               | New appliances if needed | New toilet               |

|  |                    |                       |
|--|--------------------|-----------------------|
|  | New a/c unit       | Bathroom cabinet      |
|  | Replace all lights | All new doors in unit |
|  |                    | All new paint         |

The landlord testified that the renovations do not require a permit. The contractor hired to do the renovations contacted the city and gave to the landlord a copy of the section of the city's bylaws that says a permit is not required. The landlord does not have any signed letter from the city advising permits are not required for the work planned for the rental unit.

The tenant's advocate called CH as a witness who gave the following testimony. She visits the tenant monthly. Since the flood in January, she's been there approximately six times. The damage from the original flood doesn't seem as bad as it was in January. There is a stain of approximately one foot in size on the tenant's ceiling but otherwise it looks exactly the same as it did before the flood.

During the witness' testimony, the landlord expressed disagreement with her regarding the damage to the tenant's ceiling. I advised the landlord that he would have the opportunity to examine the witness after the tenant's advocate finished, however the landlord disconnected from the hearing at 11:20 a.m.

The tenant, his advocate, the witness and I remained on the line for two minutes for the landlord to reconnect. At 11:22 a.m., the witness continued, and advised me that the tenant does not have extraordinary possessions, he is not a hoarder, and the unit does not smell of mold. She pays close attention to it and there are absolutely no signs of mold in the tenant's rental unit.

### Analysis

The parties agree the tenant was served with the Notice issued pursuant to section 49 of the *Act* on March 3, 2020. The tenant filed to dispute the Notice on April 2, 2020, within 30 days of receiving the Notice in accordance with section 49(8)(b).

49(6) of the *Act* which reads:

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.

[emphasis added]

The requirements to have the necessary permits is further addressed in Residential Tenancy Policy Guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use]:

#### B. PERMITS AND APPROVALS REQUIRED BY LAW

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

...

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator

may determine the onus of proof is on the other party. For example, *the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.*

The only evidence the landlord provided to corroborate his assertion that no permits were required to perform the renovations was an excerpt from a bylaw that he says was obtained by his contractor. No certified tradesperson was called to provide testimony and no signed letter from the city was submitted. Based on the lack of evidence, the landlord has not met the onus to prove to me that no permits were required to perform the renovations.

Second, section 49(6)(b) allows a landlord to end a tenancy to renovate or repair a rental unit in a manner that requires the rental unit to be vacant. Policy Guideline PG-2B, states the following:

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing sinks, backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

I have reviewed the details of the work planned for the rental unit, compared it to Appendix A of the policy guideline and I conclude that none of the work requires the rental unit to be vacant. The disruption to the tenant to perform any of the renovations or repairs are considered minimal and it is unlikely that any of the work requires vacancy.

The landlord has not provided sufficient evidence to show no permits are required and that the rental unit be vacant before the renovations are to take place. For these reasons, the Four Month Notice to End Tenancy for Demolition, Renovation, Repair

or Conversion of a Rental Unit is cancelled and of no further force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Conclusion

The Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit is cancelled and of no further force or effect.

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 25, 2020

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Residential Tenancy Branch