



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

On September 4, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Four Month Notice to End Tenancy for Landlord’s Use of Property dated August 8, 2020.

The matter was scheduled as a teleconference hearing. The Landlord and Tenants attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant attended the hearing; however, she unexpectedly left the hearing at 9:56 am while the Landlord and Landlord’s counsel were still making their submissions. The Tenant did not announce that she was leaving. The hearing was stopped, and a five-minute waiting period was observed to give time to the Tenant to call back into the hearing. No testimony was taken from the Landlord during this time. At 10:01 when the Tenant had not called back into the hearing, the hearing continued, and the Landlords and counsel continued with their submissions until approximately 10:10 am.

The Tenant never provided any testimony during the hearing other than her testimony on when the tenancy began and how much rent is paid to the Landlords.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure provides:

*Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

Since the Tenant left the hearing before providing her testimony, I have turned my mind to whether or not I should consider the Tenant's documentary evidence. My role is that of a neutral party and not to make submissions or arguments in support of an applicants or respondents cause. I did not have an opportunity to question or test the Tenants evidence. In addition, to consider the Tenant's written submissions without providing the Landlord an opportunity to respond to what is being considered may present prejudice to the Landlord.

While it is unknown whether or not the Tenant intentionally abandoned her application, I note that the hearing proceeded for an additional 13 minutes and the Tenant did not call back into the hearing to pursue her application.

In the circumstances, I find that the Tenant's documentary evidence should not be considered.

#### Issue to be Decided

- Is the Landlord entitled to end the tenancy based on the issuance of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("the Four Month Notice")?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began in May 2015 and is on a month to month basis. Rent in the amount of \$450.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$225.00.

The Landlord purchased the residential property and took ownership/ possession on July 29, 2020. The Landlord provided a copy of the contract of purchase and sale.

The Landlords' counsel submitted that the Landlords verbally informed the Tenant immediately upon purchasing the residential property that they intended to renovate the unit. The Landlords provided a letter from a realtor attesting that the Tenant was informed on July 29, 2020 of the Landlords intention to perform an extensive renovation.

The Landlords' counsel submitted that the Landlord confirmed with the city that a permit is not required to perform the planned renovations. The Landlord provided a copy of city building bylaw No. 2805.

The Landlord issued the Tenants a Four Month Notice dated August 08, 2020. The Notice provides the following reason for ending the tenancy:

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

The Four Month Notice indicates that the unit is required to be vacant for a period of months. The Notice indicates that no permits or approvals are required by law to do the work. The effective date for the Tenant to move out of the rental unit is December 31, 2020.

With respect to the planned work, the Four Month Notice provides that the shingles will be replaced; all windows; all bathroom fixtures; and kitchen sink, kitchen cupboards, bathroom vanity; kitchen appliances and applying drywall to interior walls. The Notice indicates that the house will have to be vacant for demolition of all interior finishes, and removal of such. Water will be shutoff for period of time. Finishing work required to be done in order to complete renovation for at least 4-6 months.

The Four Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person.

The Tenant disputed the Four Month Notice on September 4, 2020, within the required time period.

The Landlord's counsel submitted that the home was built in 1958 and is a small 967 square foot home.

The Landlords' counsel submitted that the renovations will require the stripping down of the unit including the removal of flooring, windows, and drywall down to studs. The Landlord testified that the water and electricity will need to be turned off. The Landlord's

counsel submitted that it would be unsafe for the Tenant to remain in the unit during the renovation. The Landlord's have provided documentary evidence containing a full description of the renovations and estimated time frames to perform the work.

The Landlords counsel submitted that the Landlord is a certified journeyman who will be performing the construction / renovations himself. The Landlord provided a copy of his journeyman certificate of qualification.

The Landlord testified that the windows are just sheet glass that need to be replaced and that doors are being removed and replaced. He testified that any asbestos materials will also need to be removed.

The Landlords' counsel submitted that the matter under consideration is whether or not the Landlord intends to renovate in a manner that requires vacant possession. The Landlords counsel referred to a precedent decision provided where an Arbitrator found, in similar circumstances, that the unit must be vacant to perform the renovations. The Landlords provided a copy of the Decision.

The Landlords counsel submitted that the renovations would result in a prolonged loss of services to the Tenant with no water, electricity or bathroom.

### Analysis

Section 49 (6) of the Act provides 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 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.*

Residential Tenancy Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding renovations.

*Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will:*

- make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or*
- result in the prolonged loss of an essential service or facility (e.g., the electrical service to the rental unit must be severed for several weeks).*

*Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time. As long as the tenant provides the landlord with the necessary access to carry out the renovations or repairs, then the tenancy does not need to end.*

*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.*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Landlords testimony and evidence, including the city bylaw, and I accept the evidence that the Landlords have a good faith intention to renovate the rental unit and that the planned renovations are so extensive that the rental unit must be vacant.

The Tenant's application to cancel the Four Month Notice is not successful.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective no later than 1:00 pm on December 31, 2020 after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Since there was no evidence submitted to establish that the rental unit is in a residential property containing 5 or more rental units, the Tenant does not have a first right of refusal to enter into a new tenancy agreement respecting the rental unit upon completion of the renovations.

### Conclusion

The Tenants application to cancel the Four Month Notice dated August 20, 2020 is not successful. The tenancy is ending.

The Landlord is granted an order of possession for the rental unit effective December 31, 2020. The Tenants must be served with the order of possession.

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: October 26, 2020

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Residential Tenancy Branch