# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL-4M, FFT

Introduction

The tenants apply to cancel a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit ("Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

It should be noted that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Both parties, including counsel for the landlord, attended the hearing on February 8, 2021, which was held by teleconference. No issues of service were raised by the parties.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to compensation for the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began about 15 years ago. The rental unit is part of a residential house that was built in the late 1960s or early 1970s. Monthly rent is $1,480.00.

On October 27, 2020 the landlord gave the Notice to the tenants. The Notice, a copy of which is in evidence, indicated that the tenancy was ending because the landlord intends to "Perform renovations or repairs that are so extensive that the rental unit must be vacant." Also included was a plumbing permit from the municipality.

Landlord's counsel explained that the renovations are to be extensive and would essentially be "gutting the property." They are expected to take anywhere from four to five months, and the rental unit will be rendered entirely uninhabitable throughout. There will be no working kitchen or bathroom during the renovations. Additional scope of work documentation was included in counsel's submissions, along with correspondence from contractors who indicated that "it is critical that the [rental unit] be vacant."

The tenants argued that this is the fourth attempt by the landlord to evict them. There were previous notices to end the tenancy, including different notices than the present Notice. They spoke of asking the landlord whether they could move into the adjoining now-renovated rental unit while the renovations are being done on the rental unit; the landlord refused. They argued that the renovations are only being done so that the landlord can end up asking for much higher rent.

Landlord's counsel submitted that there is no issue of *res judicata* in this dispute because the reasons for ending the tenancy are entirely different, more extensive, time has passed, the permit is in place, and the contractors are lined up. While the landlord acknowledges having issued the previous notices in error, the present Notice may be considered separate and apart from whatever reason the previous notices were given.

Analysis

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.

The Notice in this dispute was issued under section 49(6)(b) of the Act, which states:

> 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: [. . .] renovate or repair the rental unit in a manner that requires the rental unit to be vacant [. . .]

A copy of the Notice was in evidence and having reviewed the Notice I find that it conforms sufficiently to section 52 of the Act. The primary dispute between the parties is not so much whether the renovations will be so extensive as to require the rental unit to be valid, rather, the tenants dispute whether the notice is being issued in good faith.

“Good faith” is a legal concept and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy, or, as in this case, the Agreement. When the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. In this case, the tenants submitted previously issued-and-canceled notices to end tenancy.

Where the good faith intent of a landlord is called into question, as it has in this dispute, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

Landlord, through his counsel, argues that while the previous notices were issued in error, the Notice in this dispute is separate and distinct, and is not barred from consideration under the principle of *res judicata.* I am inclined to agree. The landlord has presented sufficient evidence that renovations will take place. Permits are in place and the contractors hired to do the work have been secured. While the landlord may, and is within his legal right to charge a higher rent at the end of the renovation to new tenants, this is not, I find, a reason (though there is no evidence to support the tenant’s claim that the landlord is doing the renovations simply to earn more rent, even though that is quite possible) to conclude that the landlord does not intend in good faith to renovate.

Taking into consideration all the parties' submissions, along with their oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of establishing that he intends in good faith to renovate the rental unit in a manner requiring the rental unit to be vacant for a period of up to five months. I therefore dismiss the tenants' application for an order cancelling the Notice. Further, I dismiss their application for recovery of the application filing fee.

The Notice is hereby upheld, and the tenancy shall end on February 28, 2021. An order of possession is issued to the landlord, in conjunction with this Decision. Whether the landlord wishes to extend the date that the tenancy is ending is, of course, within his discretion. Finally, the landlord is expected to compensate the tenants pursuant to section 51(1) of the Act.

Conclusion

**I dismiss the tenants' application, without leave to reapply.**

The Notice is upheld, and an order of possession is issued to the landlord.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 8, 2021

Residential Tenancy Branch