



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONEWALL APARTMENTS and BROOKSIDE REALTY LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL-4M

### Introduction

The tenant applies to cancel a four month Notice to End Tenancy dated December 16, 2020 given for demolition, renovation, repair or conversion of the rental unit pursuant to s. 49(6) of the *Residential Tenancy Act* (the “RTA”).

Both parties attended the hearing, the landlord by its representatives MM and AZ, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the evidence show that the landlord complies with the prerequisites for such a Notice: good faith intention, all necessary permits and approvals, the need for vacant premises to conduct the work and the need to end this tenancy to do so?

### Background and Evidence

The rental unit is a one bedroom apartment in an eight unit building constructed in the 1960's or '70's. The tenancy started in May 2016. The current monthly rent is \$660.00. The tenant says the landlord holds a \$300.00 security deposit. The current landlord purchased the property in August 2020.

Since purchase, the landlord has renovated an empty suite and partially renovated another while it was tenantless.

The work proposed for this unit is set out in a quote provided by handyman. It includes:

- Painting the ceiling and walls,
- New trim throughout,
- New interior doors,
- New vinyl plank flooring,
- Relocation of the bedroom door,
- New kitchen cabinets, sink, countertop and backsplash,
- New bathroom sink, tub, curtain, vanity, toilet, mirror and accessories like toilet paper hold and towel holders and new light fixture,
- New tile around the tub,
- Undercounter lighting and ceiling lights (if desired),
- New plugs and switches, and
- Installation of fridge, range dishwasher, hood fan and a washer and dryer.

At hearing, MM for the landlord indicated that a washer and dryer were not being installed in this rental unit.

MM testified and produced documentation to show that none of the contemplated work required any permits or approvals at this point, but if it is discovered that the work necessitates moving plumbing or electrical works, then any needed permit will be sought.

The estimate does not state how long the work will take. MM testifies that in his opinion three or four weeks will be needed.

He says the landlord wants to do all the work at once and so it will need the premises empty to do so otherwise it would be chaos for the tenant. He admits that if the work was done in stages the tenant would not need to move out.

MM notes that some water spots have been observed in the ceiling of the rental unit. The cause has not been investigated yet. Repair of water leaks is not part of the work cited to support the Notice.

In response the tenant refers to the two rental units that have been renovated and points out that the rent more than doubled when they were ultimately rented out.

### Analysis

As pointed out at hearing, a landlord in possession of an empty rental unit is free to make any improvements it wishes and to rent it out and any rent the market will bear. The rent being paid by a former tenant has no bearing on the new rent a landlord can negotiate with a new tenant.

However, once there is a tenancy, it is the aim of the *RTA* to preserve that tenancy and limit rent increases in accordance with strict rules.

When it comes to ending a tenancy for the purpose of conduction renovations strict rules apply.

Section 49(6) of the *RTA* allows a landlord to end a tenancy in the particular circumstances of demolition, repair or renovation. It provides:

(6) 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.

The law applied in the circumstances of a four month Notice to End Tenancy for repair or renovation (s. 49(6)(b) above) has been set out in at least two decisions of the B.C.

Supreme Court: *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, Slade, J., and in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Williamson, J.

In the *Berry* case Justice Williamson confirmed that the *RTA* is a statute that seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in the favour of the benefited group, namely: the tenant.

Justice Williamson indicated that section 49(6)(b) of the *RTA* sets out three requirements:

- (a) The landlord must have the necessary permits;
- (b) The landlord must be acting in good faith with respect to the intention to renovate; and
- (c) The renovations are to be undertaken in a manner that requires the rental unit to be vacant.

Regarding the third requirement, he indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant, empty, in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

In this case, the landlord has not shown that the work must be completed all at once. It may be assumed that it would be more convenient for the landlord and perhaps for the handyman, but that is different from it being required that it be all at once.

In this case the landlord has not shown on a balance of probabilities that any of the work, even if performed all at once, would require the rental unit to be vacant. The

handyman does not indicated that in the estimate, nor is there any other evidence from a person shown to be knowledgeable about such things that the only way to accomplish the renovations is to have the tenant vacate the rental unit.

The landlord has not shown that the only way to have the rental unit empty to complete the work is to end the tenancy.

For these reasons, I find the landlord has not established the essential grounds to support its four month Notice to End Tenancy and I hereby cancel it.

### Conclusion

The tenant's application is allowed. The four month Notice to End Tenancy dated December 16, 2020 is cancelled and of no 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: February 11, 2021

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Residential Tenancy Branch