



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLC Management Inc and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC CNL ERP OLC RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on March 11, 2021. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' amendment.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

During the hearing, the Landlord explained that the 1 Month Notice to End Tenancy for Cause was issued in error, as they were unaware that they could not issue that Notice for repeated late payment of rent that occurred during the emergency COVID period between March and August 2020. The Landlord requested to withdraw the 1 Month

Notice, and the Tenant did not take issue with this. I here by allow the 1 Month Notice to be withdrawn, and it is of no force of effect.

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenant applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the Notice)

### Background and Evidence

The Tenant confirmed that she received the Notice on January 24, 2021. The Notice indicates the landlord is ending the tenancy because he *“is going to perform renovations or repairs that are so extensive that the rental unit must be vacant.”*

The Landlord also selected the box indicating that:

- I have obtained permits and approvals required by law to do this work

The Landlord stated that they provided a copy of the building permit to the Tenant at the time the Notice was given to her. On the Notice itself, the Landlord indicated that the Notice was issued for interior alterations to the unit, and they cited the permit number.

In the hearing, the Landlord stated that this rental unit is part of a multi-unit building, which used to be a motel. The Landlord stated that the motel was converted to individual rental units many years ago, and the building no longer operates as a motel. The Landlord stated that this building is around 60 years old, and is largely unrenovated. The Landlord stated that they have owned the building since around 2005,

and have only done smaller renovations to each unit, as needed, and once they are vacant.

The Landlord stated that, over the years, there have been several floods, and issues with the plumbing, mainly in 3 of the units. The Landlord explained that this particular unit has had at least 3 flooding issues in the past few years. More specifically, there was a flood in an adjacent unit a couple years ago, due to a plumbing issue. That flood impacted at least 2 units. There was also another flood a couple of years ago where the toilet in this rental unit leaked, and flooded the unit. At that time, the water infiltrated the flooring, and although the water was cleaned up, the Tenant is concerned there is ongoing mold and floor damage. There was also a third flood in the second bathroom in this rental unit in the fall of 2020.

The Landlord explained that this Tenant has always been difficult to deal with, so the relations have at times been contentious. However, the Landlord stated that the issuance of this Notice has to do with doing repairs that are required, and have been for a long time. The Landlord stated that they plan on “gutting” this unit, and 2 other adjacent units, because the water/flooding issues for these 3 units are interconnected and related. The Landlord stated that some of the flooding has affected adjoining walls, and the scope of the renovations is such that it is not safe for the Tenant to reside in the unit.

The Landlord stated that they will be removing all drywall inside the entire rental unit, removing some fixtures, cabinets, flooring, bathtubs and toilets. The Landlord explained that they have hired a contractor who developed a work plan. A copy of the work plan has been provided into evidence. In this work plan, it lays out that all 3 units, including this unit, are to be “completely renovated”. It lays out that the plan is to remediate the flooding issues, and accompanying damage, as well as to bring the rental units, and their utilities up to market standard.

The Landlord provided the following details for the scope of work on this particular unit:

**Unit 5 (Two-bedroom, two-bathroom reno into two-bed, 1.5 bath)**

- Remove all drywall down to studs & reinsulate & redo & paint
- Electrical: rewire entire unit, replace electrical outlets, and wire in living room lighting
- Build living room closet
- 
- Remove lower kitchen cabinets & sink & replace
- Remove upper kitchen cabinets and replace
- Replace refrigerator
- Replace stove
- 
- Bathroom 1
- remove bathtub, fixtures, and surround & replace
- remove and replace window
- 
- Bedroom 1
- remove and replace flooring
- remove drywall down to studs, reinsulate, and replace & repaint
- repair closet (doors and runners)
- 
- Bedroom 2
- remove floor and assess foundation- replace wood and flooring (pending results of assessment)
- ⊖ remove sealed off door in bedroom, replace with wall, insulate, drywall, and paint
- 
- remove drywall down to studs, reinsulate, and replace & repaint
- 
- Bathroom 2
- remove bathroom floor and assess foundation- replace wood and flooring (pending results of assessment)
- remove bathtub and shower surround- remove tub plumbing, wall in, add flooring, build linen closet/shelving.
- remove bathroom drywall to studs & replace & paint
- remove bathroom fixtures and replace
- remove and replace toilet
- remove bathroom vanity and replace

The Landlord explained that this work has been a long time in the making, and due to the interconnection of the units, their utilities, and the flooding, they have to do the work on all 3 units at the same time. The Landlord stated that they obtained the building and

demolition permit on January 14, 2021, and issued this Notice on January 24, 2021. The Landlord stated that this is the only permit that is required to commence the work, and their contractor won't apply for an electrical permit until the walls are open, and the scope is more certain, given the age of the building. The Landlord also stated that the electrical permits are usually only valid for 6 months, whereas building permits are much longer. The Landlord stated that they are entitled to renovate the units without an electrical permit. The electrical permits will only be applied for once the Landlord can see the underlying wiring infrastructure inside the walls, once they are opened up.

The Landlord stated that this renovation will take at least 3 months, likely more, and given the age of the building, the scope will likely increase beyond the actual work plan. The Landlord stated that they have been warned the timeframe of the renovations could extend because there are labour shortages in the trades currently. The Landlord stated that they have tried to offer the Tenant an alternative room to rent, at several points along the way, in order to perform different fixes and repairs, but they no longer have any other rooms to offer the Tenant. The Landlord now requires vacant possession of the unit to address and remedy underlying and aging infrastructure and utility connections, and to bring the building up to current code. The Landlord denies this has to do with evicting the Tenant to obtain more rent.

The Tenant stated she feels the Landlord wants to evict her because she has requested repairs to her two bathrooms, flooring, and to remediate mold. The Tenant stated that the Landlord should repair her rental unit, and she should not have to move out or pay more rent in order for the Landlord to maintain the unit. The Tenant stated that the Landlord has not taken her request for repairs to the unit seriously enough, and now she feels they are seeking to evict her, rather than repair the way she has requested (with her still in the unit). The Tenant wants the Landlord to address the issues with the floor, and potential mold.

The Tenant opined that the building permit is not a proper permit, because it lists the building as "commercial", rather than residential. The Tenant further stated that there are no electrical permits issued yet, which the Landlord should have had before issuing this Notice. The Landlord explained that there are several units, with different tenancies, and until they have vacant possession of all the units, they will not know with sufficient reliability, when the work can start. The Landlord stated that given the uncertainties about when the different Tenants in these 3 units will actually move out, and given they only have 180 days to complete the electrical work after that permit is issued, they have to wait until closer to when they actually need the electrical permit. The Landlord stated that they will not need this electrical permit until they start working on the electrical

wiring, and know what their scope of work will be (which won't be known until the walls are opened up).

The Landlord explained that the work which requires the unit to be vacant is largely the drywall removal, re-insulation, as these are the most hazardous to live around.

However, they also feel the loss of electrical and plumbing fixtures during the renovation also make this unit uninhabitable.

### Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to perform the stated purpose on the Notice.

I find the tenant was duly served with the Notice on January 24, 2021. The Notice was served pursuant to section 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.

Residential Tenancy Policy Guideline # 2 - Ending a Tenancy: Landlord's Use of Property, states as follows:

*When ending a tenancy under section 49 (6) of the RTA or section 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. This includes any additional permits, permit amendments, and updates. It is not sufficient to give*

*notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.*

*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.*

*[...]*

*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 BC Supreme 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. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:*

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));*
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).*

I further note the above Policy Guideline speaks to the relevant case law, and the requirements to end the tenancy for renovations. It states as follows:

*In Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 (see also Baumann v. Aarti Investments Ltd., 2018 BCSC 636), the BC Supreme Court found there were three requirements to end a tenancy for renovations or repairs:*

- 1. The landlord must have the necessary permits;*
- 2. The landlord must intend, in good faith, to renovate the rental unit;*  
*and*
- 3. The renovations or repairs require the rental unit to be vacant.*

*In order for the third requirement to be met:*

- a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and*
- b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.*

*In considering this third requirement, an arbitrator must determine first whether the unit needs to be empty (i.e. unfurnished and uninhabited) for the renovations to take place, and second, whether the required emptiness can only be achieved by ending the tenancy. A landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work.*

*If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.*

First, I turn to the 3 main components as laid out above (as per *Berry and Kloet v British Columbia*) that must be in place in order for the Landlord to end the tenancy in this manner. With respect to the first point, I note that 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.

In this case, I note the Landlord provided a copy of the overall building permit, which was issued on January 14, 2021. This building permit covers this unit, and the two other adjoining units (interior renovations). I do not accept that just because this building permit is for a building that is “commercial”, that it is an invalid permit. It seems likely that the building was initially designated as commercial due to the fact it used to be a motel. In any event, the municipality decided to issue the permit, and there is no evidence to support that it is not valid.



I accept that the electrical permit has not yet been issued. However, I find the Landlord's explanation as to why this has not yet occurred is reasonable. I accept that the scope of the electrical repairs and work will not be fully known until the Landlord is able to open up the walls and the ceilings. I accept that the Landlord is not required to have an electrical permit in place, from the municipality's perspective, in order to remove all the drywall, and insulation in the unit, which is the main part of the reason why vacant possession is required.

I find the Landlord had the necessary permits and approvals required in place at the time the Notice was issued to cover the extent of the work which underpins the need for vacant possession. In other words, the Landlord requires vacant possession of the unit largely because of the fact they are removing all interior drywall, and insulation, and this work is hazardous and unsafe to live around. The Landlord had the permits necessary to conduct this work at the time the Notice was issued and this work makes the unit uninhabitable.

With respect to the second requirement, I note the Tenant has questioned the Landlord's good faith intentions. The Tenant has suggested this is because she has requested that repairs be done to her unit, and the Landlord would prefer to evict her, than do the work. The Tenant also suggests that the Landlord doesn't like her and just wants her out, which would also allow them to re-rent the unit for more rent. I have considered the Tenant's assertions. However, I note the Landlord has provided a compelling explanation as to what they are renovating, and why. I accept this is 60 year old building with little to no major improvements done. I also accept there were a series of floods, in multiple units, and this renovation is to address failing building materials. I find the Landlord has sufficiently demonstrated that they are intending, in good faith, to renovate the unit in a manner which requires the unit to be vacant, rather than simply trying to evict the Tenant due to personality conflicts, or to raise the rent.

Ultimately, I find the Landlord has sufficiently demonstrated his good faith intentions with respect to this Notice.

With respect to the third part of the test laid out in *Berry and Kloet v British Columbia*, I note that it has two subcomponents to it:

- a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and*
- b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.*

I find there is sufficient evidence to show that the renovations are such that it is not reasonable or practical to live in the unit (or leave any possessions behind). Removal of all interior drywall, removing kitchen and bathroom cabinets and fixtures, and disconnecting utilities, all make this unit uninhabitable during the renovations. I am satisfied the work requires the unit to be empty.

The second part of this third part of the test involves determining whether or not the only way to achieve this emptiness is by terminating the tenancy. In *Berry and Kloet v British Columbia*, the Judge elaborated on this multi-part test and said that if the Tenant is willing to vacate the rental unit during the renovations, then it is not necessary to end the tenancy. In this case, I accept the explanation from the Landlord that they do not have any other available rooms to offer the Tenant while the unit is being renovated. I also accept that the renovations could last many months, and could easily expand in scope given the age of the building, the repeated flooding, trade labour shortages, the potential mold, and the fact that this renovation also covers multiple units, with similar issues. Ultimately, the nature and scope of these renovations are such that it is not reasonable to expect to continue the tenancy until the renovations are complete.

Overall, I find the Landlord has sufficiently demonstrated that the tenancy must end in order due to the renovations. I dismiss the Tenant's application to cancel the Notice. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, effective May 31, 2021, at 1pm, which is the effective date of the Notice.

### Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective May 31, 2021, at 1 PM, after service on the Tenant. If the Tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 11, 2021

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Residential Tenancy Branch