



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, ERP RP**

Introduction

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 4 Month Notice to End Tenancy for Landlord's Use (Demolition, Renovation, Repair or Conversion of the Rental Unit) pursuant to section 49; and
- An order for repairs and emergency repairs to the rental unit pursuant to section 32 and 33.

The name of the respondent was spelled differently in each of the two applications of the tenant. At the outset of the hearing the landlord provided the correct spelling of their name and the correct name is used in the style of cause for this decision.

This matter was set for hearing by telephone conference call at 11:00 am on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the respondent.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the applicant did not attend the hearing by 11:10 am, and the respondent appeared and was ready to proceed, I dismiss the tenant's claim in its entirety without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director ***must*** grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue on which a previous binding decision has been made involving the same parties.

There was a previous hearing under the file number on the first page of this decision. That hearing dealt with the landlord's 4 Month Notice dated November 4, 2020 with an effective date of March 4, 2021 providing that the tenancy ends as the landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant. The details of the planned work was, "structural renovation and electrical work". The landlord wrote in their 4 Month Notice "reconstruction, plumbing, electrical, and any other work required to get the house up to better living conditions". In the earlier decision of February 23, 2021 found that the landlord had not met their evidentiary burden and cancelled the 4 Month Notice.

The landlord subsequently issued another 4 Month Notice dated February 28, 2021 substantially identical to the earlier notice. The reason provided on this notice for the tenancy to end is again that the landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant. The details of the planned work is "structural renovation and plumbing". The landlord wrote in their 4 Month Notice "reconstruction, plumbing and any other work required to get the house up to better living conditions".

I find the issuance of the present 4 Month Notice within days of receiving the earlier decision, for reasons identical to the earlier 4 Month Notice to be an attempt by the landlord to reargue a matter that has been considered and conclusively determined. It is obvious on the face of the documents that they are substantially identical and issued for the same reasons.

I find that the present matter of the landlord's 4 Month Notice is *res judicata* as the matter has already been conclusively determined and cannot be adjudicated again. Accordingly, while I have dismissed the tenant's application, I decline to issue an Order

of Possession in the landlord's favour. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: June 4, 2021

Residential Tenancy Branch