



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order cancelling a Four Month Notice to End the Tenancy for Demolition, Renovation, Repair or Conversion of a rental unit dated January 21, 2021 ("Four Month Notice"), and for a monetary order for damage or compensation under the Act in the amount of \$13,682.50. However, as the Tenant vacated the rental unit on April 1, 2021, I find that the first claim is no longer relevant, and I dismiss it without leave to reapply. Consequently, we examined the Tenant's monetary claim in the hearing.

The Tenant, J.B., and an agent for the Tenant, H.D. ("Agent"), and the Landlords, R.C. and J.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Landlords, J.E., was available to provide affirmed testimony.

During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that

the Decision would be emailed to both Parties.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2016, with a different landlord. The Parties agreed that the Tenant paid the current Landlords a monthly rent of \$975.00, due on the first day of each month. They agreed that the Tenant paid the Landlords a security deposit of \$487.50 and no pet damage deposit. The Parties agreed that the Landlord gave the security deposit back to the Tenant in full when she moved out.

The Tenant said that she received an eviction letter from the Landlords with the Four Month eviction notice. This Four Month Notice was signed and dated January 21, 2021, it has the rental unit address, it was served via registered mail on January 27, 2021, and had an effective vacancy date of May 31, 2021.

However, as section 90 of the Act states that documents served by mail are deemed served five days after mailing, I find that the Four Month Notice was served to the Tenant on February 1, 2021. As such, and pursuant to section 49(2)(b) of the Act, the effective vacancy date is not earlier than four months after the date the tenant receives the notice, and the day before the day in the month when rent is payable under the tenancy agreement. As such, the effective vacancy date for the Four Month Notice is June 30, 2021, (the incorrect date noted on the Four Month Notice is automatically corrected by section 53 of the Act.

The Four Month Notice was served on the ground that the Landlords were going to perform renovations or repairs that are so extensive that the rental unit must be vacant. The Four Month Notice also states that the Landlords have obtained all permits and approvals required by law to do this work. The Landlords filled in details of the permit, noting that it was issued by the local municipality on January 19, 2021, to re-pipe the

rental unit, and the permit number was provided.

In the hearing, the Agent said:

We didn't feel that the eviction was a good faith eviction. To have her removed because she was grandfathered in at a lower rental rate. At same time as work was being done to have her evicted, and not able to return. It was stated by them that she was an exemplary tenant. We thought whatever repairs needed to be done and then they would find another tenant coming in at a higher rate.

J.B. and the tenant who resided in number four above her were the only two that received this letter; the other two occupants were surprised by it. Including up to the date that J.B. was moving out, another tenant had not received any notification of any repairs in the building.

It was great a difficulty, following the over four months that she had to be out of the suite in the last years. There was a flood due to the unit above her. During the over four months that she was out, there were extensive opening of walls. It seemed odd that work couldn't have been done at that time that would have prevented her from moving out this year.

The Landlords said:

First, let's talk about the flood in 2019. A washing machine on the second floor malfunctioned, and a tremendous amount of water came into [the Tenant's] unit. She needed to move out for four months. Our concern when we bought the building in 2018 - this flood happened six months later - it was six months later. This was the first of six floods we had in the building. When we had remediation and trades workers going through there, they didn't tell us that anything was wrong with the pipes.

The first of six floods – we couldn't have known that we would have five floods in the next year and a half, so that's why we didn't re-pipe at the time, and no trades ever told us about the pipes.

The next thing is that [the Tenant] made comments that we were evicting the grandfathered portion of the building. But the process and rationale that brought us to evicting the left side of the building - when we had our flood in November 2020, the plumber that came out to do those leaks, they had been out to other

leaks. We've come out and you've had pin hole leaks and . . . they said, even though copper pipes should last up to 70 years, these are prematurely deteriorating. You need to re-pipe the whole building. At that point, we, as Landlords and home owners, we have a due diligence to act on the recommendation. It was at this point that we reached out to various plumbers, because that one was expensive. We worked with [the Municipality] to see if a permit was required, they said 'absolutely'.

The plumbers we spoke to had all been in our property (referred me to page 4 of the Landlord's first submission). There's a picture of the front of the building. There's a left-hand side and a right-hand side. All of the plumbers said that on the left-hand side the water pipes were connected, and the shut offs were in the bottom side. If they were going to re-pipe the unit, they needed to do the bottom and top at the same time – their water's connected. If they want to access kitchen, bathroom pipes, etc. they need to remove the ceilings.

With that in mind, we phoned the RTB on January 12; I described this project and told him we had to do it in sections. He said in order to evict tenants, we would have to do a four-month eviction for something like this.

I took [the RTB Information Officer ("IO")] through the building, and told him that the purple box in the picture is a fixed-term tenant. The IO said you can't evict the fixed-term tenant. He said there are only two ways to evict the tenant in a fixed-term tenancy and you don't have one of them.

We followed [the IO's] advice and we evicted the left side of the building, because that's all that we were allowed to do.

We're just trying to hit all the points [the Tenant] had spoken to. I believe she spoke of bad faith and this not needing to be done, and I'll take you to the summary on page 7 of same booklet [entitled: "Summary of costs due to floods/leaks"].

The first flood – [the Tenant's] was a big one. Subsequent ones caused \$3,000.00 to \$4,000.00 damage each time. The plumbers said doing these band aid solutions wasn't the best approach. These floods were happening at regular intervals, and we were not just out cost, but also, tenants continued to have their flooring pulled up and replaced or damage to their couch and their bed. It's unfair that they had to live like this. We have a duty to fix the problem. Can't have

tenants living in a wet, mouldy building.

After leaks #5 and #6 – we couldn't leave it until the fixed-term tenancy was over; that's why we acted so quickly with the plumber, the Township, and the RTB.

The Landlords submitted a copy of the tenancy agreement of the tenants in unit #3 of the residential property – in the right side of the building. This tenancy agreement states that these tenants have a fixed-term tenancy from November 15, 2020 until November 14, 2021. At that time, the tenancy becomes a month-to-month in duration.

The Agent said:

There was the worksheet submitted. It's down to the one year's rent in lieu of being evicted. It was through some of the paperwork sent and what was noted from RTB to seek compensation. And going through with everything she was going through in the last years. This has taken a tremendous toll on her health – physically, as well a mentally. Stress, anxiety, the physical part, COPD, arthritis – she's 76 years old. One point that I did want to mention: I was basically denying that this work had to be done. That's not my point, but what they were saying - how long it would take and how much, versus the quote from the plumber, which was over \$5,000.00 – it wouldn't seem to take months and months or to tear her apartment apart and to have all her belongings moved out.

Last year when she was out for over four months, it was a tremendous difficulty for her. She's a widow and has no children or immediate family; we do everything we can to assist her. It was a huge worry this year, given what was taking place in the Province for rentals – what could we find? She is on a very fixed income; we had no idea how to find some place else to live. The place she is now in just happened to come up, so we jumped on that.

The Landlords said:

Perhaps we misheard this part, but is part of the \$12,000.00 compensation for the flood of 2019? [the Tenant said "No."]

The concern that I'm having is that we are very remorseful that there has been health and stress and anxiety for moving out of a rental unit, but my understanding for the additional compensation that is available to tenants is that it's if the landlord is acting in bad faith. So, we are remorseful and we ... your

stress... isn't grounds for compensation. That's not true.

When we sent the eviction package, we sent a letter with the form, explaining the need for the piping to take place, and I felt that was a nice personal touch to explain.

On February 13, [the Tenant] phoned our property manager. [The Tenant] can phone us or Jason, the property manager, but she phoned Jason on February 13, the day after the Agent filed for arbitration for the monetary claim. It was after a large snowfall, and she asked Jason if he was going to be clearing the snow. But in the phone call, she made no question, concern, or anything to do with the move out. Here [the Tenant] could speak to someone of authority. The Agent had made a comment that we had made no attempt at conversation with [the Tenant] about this process. I was saying that she had the opportunity to make her wishes and concerns known when she spoke to Jason on February 13, but she decided not to bring up any questions or concerns in this phone call. The previous day they had applied to the RTB. Here they are speaking to the property manager. [The Tenant] phoned the property manager that day.

[The Tenant] also has our phone numbers, and we're available 24 hours a day. When we had sent our eviction letter to [the Tenant], we felt it was in her court to reach out to us, if she felt she could stay some place else, or had another solution, but there was no reach out until the arbitration process had started.

Section four of the eviction paperwork has instructions for tenants. It says that the onus is on the tenant to reach out to the landlord to say 'I would like to move out of the rental unit until the work was done', and we never heard from [the Tenant] after then.

Bad faith? [The Agent] commented that we were acting in bad faith. One reason is that she saw a dollar figure of around \$5,000.00 that didn't seem to lead to eviction. To do a plumbing permit through [the Municipality], you need to only put down the plumbing quote - \$5,150.55 was the initial quote. But the figure they asked for was only the plumbing. But when we look at the estimates and quotes, the whole building is going to cost us just under \$21,000.00.

The Landlords submitted a note that was to be a summary of a telephone conversation between the Landlords and their plumber who was hired to do the re-piping work. This note states the following:

On March 17, 2021 we phoned our plumbers... to discuss the re-piping project. Our plumber (Pierre) let us know that [the Agent and the Tenant] phoned them 4 x several weeks ago and after a few attempts of calling, they spoke with Pierre about the upcoming re-piping project to [the Tenant's] unit.

They asked if they were hired by us. Pierre said yes.

They asked about the scope of the work. Pierre told them they would be ripping out a tremendous amount of drywall to re-pipe the unit. And that it needed to be vacant as it would be unsafe for a tenant to remain living there.

They asked if the re-piping project was necessary. Pierre said yes, there have been several leaks/floods in the building and if the re-piping is not done, there will continue to be more leaks/floods.

Pierre ended the phone call by stating that [the Tenant] should contact us to discuss this matter further as he does not want to get involved with any disagreements between [the Tenant] and us.

This phone call demonstrates that [the Agent and the Tenant] were able to confirm the re-piping project directly with our plumbers. .

[emphasis added]

The Agent said:

[The Tenant] called about the snow removal. She didn't think that he was the person to be bringing anything up with.

I talked to [the Landlord, J.C.] that one day – re the onus being on [the Tenant]; yes, there was that letter with the package. Yes, it wasn't a form letter, but nor would [the Tenant] say that it was working with your tenant. We don't want you to be upset; we want to work with you. It's totally putting it back in her court. It's not fair to put the onus on her.

I think to summarize again, it would have been much appreciated if this was handled differently. If they talked to [the Tenant], worked with her. She loved that apartment, and loved living there, and it's been a huge difficulty on her that nobody can begin to understand how this has affected her.

The Landlords said:

I would say that with the letter we sent, we felt that was our way of communicating with [the Tenant] of what was going on, and why we decided to do the piping. It was her opportunity to give us a call – she had three people's phone numbers; she did call Jason. We said she is able to speak to Jason about anything. We do feel that she had the opportunity to express her concerns and her questions, but she didn't.

But what we're talking about is a monetary order for \$12,000 . . . We have concerns about when [the Agent] and [the Tenant] applied for the monetary order - that took place on February 25. She was still in the unit for six more days. She said it was unfit for occupancy given the work being done.

Section 9 on the back of the RTB form says that after a tenant has moved out, if the landlord hasn't taken steps within a reasonable time. . .they must compensate for one year's rent. She hadn't moved out yet. The work had to commence within a reasonable time after vacancy. The work is still being done on units 2 and 4, so we're concerned that she's brought up this claim prematurely. She hadn't moved out, and we did commence work – there are eight pieces of evidence in our package to support this.

Even though we are sorry and remorseful that she has gone through a trying time, the copper pipes in the building were prematurely failing and if we didn't act, there would have been more leaks and floods. Our plumber said when they were clamping the pipes to remove them, he barely had the clamp down and it crumbled in his tool. I can tell you that that pipe would have been problematic.

In their documentary submissions, the Landlords provided a timeline of when events occurred in this repair project, as well as receipts and update information. For instance, the Landlords submitted a copy of an email dated April 16, 2021, from the plumber to the Landlords, which stated the following:

This is a confirmation that yes we started the re-piping for Unit #2 and Unit #4 on Monday, April 5<sup>th</sup>, 2021. As of today, April 16<sup>th</sup> 2021, we are still currently working at this stage of the project. During this stage there were portions of the piping that was ready to fail throughout the building. With this being said, we should have this portion of the project completed by April 23<sup>rd</sup> 2021.

After this date you should be able to start the completing process with the drywallers. Please note, we will have photos to follow in a separate email.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49(6)(b) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 51 of the Act sets out a tenant's compensation after the landlord serves the tenant with a notice to end the tenancy under section 49. Pursuant to section 51(2), such a tenant is entitled to receive the equivalent of 12 times the monthly rent payable under the tenancy agreement from the landlord if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

RTB Policy Guideline #2B ("PG #2B") states:

When ending a tenancy under section 49(6) of the RTA or 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. If a notice is disputed by the tenant, the landlord is required to provide evidence of 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.

I find that the Landlords have established on a balance of probabilities that they

obtained the permits and approvals needed for the repair work before serving the Tenant with the Four Month Notice. In addition, based on the way the Landlord explained the layout and structure of the plumbing pipes in the residential property, I find it reasonable that the Landlord chose to work on the left side of the building, or on the Tenant's side of it first. There were tenants with a fixed-term tenancy on the other side of the building; the Landlords could not end that tenancy under section 49(6) of the Act, and so they had to wait until the end of the fixed-term tenancy in November 2021 to repair the right side of the building. Further, the Landlords gave evidence that the Tenant's unit and the one above hers were connected by piping, shut offs, etc., and so they had to be done together. I find the Landlord proceeded in this manner, based on advice they had received from information officers at the RTB.

As the Landlords said in their testimony, the Tenant applied for this compensation before she moved out. She had not given the Landlords a chance to use the rental unit for the stated purpose or to take action in a reasonable amount of time before she applied for compensation. As such, I find that the Tenant was premature in applying for this type of compensation.

The Tenant referred to the Landlords' lack of "good faith" in serving the Four Month Notice. PG #2B addresses the law of good faith, as follows:

### **C. GOOD FAITH**

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

[emphasis added]

Based on the evidence before me, overall, I find that the Landlords were acting in good

faith when they served the Tenant with the Four Month Notice. I find that the history of leaks and floods in the residential property for the short period of time that the Landlords have owned the property support their claim that the copper pipes are deteriorating prematurely and have to be replaced.

I appreciate and do not diminish that the Tenant suffered stress, anxiety, discomfort, and inconvenience from having to move from her rental unit for this reason; however, I find that the Tenant has not established grounds for an award of 12 months compensation under the Act in this set of circumstances. If the Tenant had wanted to return to the rental unit after the construction, it was up to her to share this desire with the Landlords. I find the Landlords reached out to the Tenant with the personal cover letter they included with the Four Month Notice. I find it unreasonable for the Agent to say that it was unfair to put it in the Tenant's court to communicate with the Landlords – how else would the Landlords know the Tenant's intentions or thoughts about the situation.

Further, this tenancy ended when the Tenant moved out on April 1, 2021. The Landlords' evidence is that the plumbing work was underway on April 5, 2021. I find this establishes that steps were taken by the Landlords within a reasonable time after the tenancy ended to accomplish the stated purpose of ending the tenancy, pursuant to the Act. I find that the Landlords acted in good faith in this matter. I find that it is more likely than not that they had to undertake this construction work in vacant suites in order to maintain the structural integrity of the water pipes in the residential property.

Accordingly, I dismiss the Tenant's Application wholly without leave to reapply.

### Conclusion

The Tenant is unsuccessful in her Application for monetary compensation from the Landlords. The Tenant failed to provide sufficient evidence to establish that the Landlords acted in bad faith in this eviction.

Further, the Tenant did not establish that the Landlords failed to take steps within a reasonable amount of time after the effective vacancy date of the Four Month Notice to accomplish the stated purpose for ending the tenancy. The evidence shows that the Landlords acted immediately after the Tenant vacated the rental unit to initiate the plumbing repairs.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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 16, 2021

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Residential Tenancy Branch