



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL-4M**

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49(6).

The tenant attended with the advocate JD ("the tenant"); JD was affirmed during the hearing and provided testimony.

At the outset, the names of the landlords were amended by consent to reflect there is a second landlord. The proceedings are corrected throughout. The landlords attended with the lawyers CS and LR ("the landlords").

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

### *Recording*

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. The parties had no questions about my direction pursuant to RTB Rule 6.11 and each confirmed that no recording was taking place.

In addition, the parties confirmed their email addresses and stated they understood that the decision and any applicable orders would be emailed to them.

### *Preliminary Issue – Burden of Proof*

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application 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 tenant's application is dismissed and the landlord has issued notices that are compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the notice and seeks to end the tenancy.

Accordingly, the landlord provided testimony first. The tenant then provided testimony.

### Issue(s) to be Decided

Is the tenant entitled to a cancellation of the 4 Month Notice? Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties submitted many documents as well as considerable disputed testimony in a hearing that lasted 3 hours and 15 minutes. Each party provided comprehensive and detailed documents which were submitted in indexed form.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed the landlords purchased the property in which the unit is located in February 2021 and the tenant pays monthly rent in the amount of \$950.00 which includes hydro. No security deposit was paid at the beginning of the tenancy.

The tenant testified that the tenancy began six years ago with the previous owner and there is no written tenancy agreement.

The parties agreed the unit is a suite in a residential home. Only the tenant's unit is occupied at this time.

The parties agreed that the landlords issued a 4 Month Notice dated February 25, 2021 which was served on the tenant that day. A copy of the 4 Month Notice was submitted which is in the standard RTB form. The effective date is June 30, 2021.

A checked box in the 4 Month Notice states the landlords are going to:

*Perform renovations or repairs that are so extensive that the rental unit must be vacant. Indicate how many anticipated weeks/months (please circle one) the unit is required to be vacant.*

The word "months" is circled. The following is handwritten at the end of the line:

*"-approx. 2 months"*

The following box in the 4 Month Notice is checked:

*No permits and approvals are required by law to do this work.*

The following is handwritten in the section titled, "The work I am planning to do is detailed in the table below" under "Planned Work":

*-Remove asbestos from walls in suite that are part of the original structure a& replace with new drywall, insulation, etc.  
-upgrade hotwater supply  
-upgrade finishes throughout – complete renovation*

The following is also handwritten in the section titled, "The work I am planning to do is detailed in the table below" under "Details of work (\*If you are ending the tenancy for renovations or repairs, explain why the renovations or repairs required the rental unit to be vacant)":

- *Health Hazard*

The landlords testified as follows. The landlords had no permits and approvals at the time of the service of the 4 Month Notice. The landlords subsequently learned from the municipality that such permits and approvals were required. Appropriate applications were then made, and permits received.

The tenant requested a dismissal of the 4 Month Notice as the landlord is required to have permits and approval in place before giving the Notice. The tenant also stated that the work as he understands it does not require him to vacate the unit. Alternatively, if he must move out, he is prepared to do so and then move back in. The tenant claimed the landlord did not issue the 4 Month Notice in good faith.

The landlords stated the renovations and repairs are extensive and required that the unit be vacant. They stated that a Stop Work Order was issued on April 1, 2021 following the service of the 4 Month Notice. They also stated that they subsequently obtained building permits dated June 11, 2021, copies of which were submitted.

The landlord requested an Order of Possession.

The landlords stated they have issued a second 4 Month Notice. The tenant stated he has applied for cancellation of the Notice under the file number referenced on the first page. The hearing has not yet been scheduled.

The tenant requested a dismissal of the 4 Month Notice.

### Analysis

Under section 49(8)(b) of the Act, a tenant may dispute a 4 Month Notice by making an application for dispute resolution with 30 days after he received the Notice. The tenant received the 4 Month Notice on February 25, 2021 and filed this Application for Dispute Resolution on March 23, 2021 within the timeline.

Section 49(6) states as follows (emphasis added):

*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 4 Month Notice states as follows, in part (page 2, as written):

## **2. PERMITS AND APPROVALS REQUIRED BY LAW**

Your landlord must have all permits and approvals required by law **before** they give you this notice. Permits and approvals required by law can include demolition, building or electrical permits issued by a municipal or provincial authority, ...

Policy Guideline 2B: ***Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*** states in part (as written; underlining in document reproduced below):

“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 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.

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.

The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.”

...

The landlords’ acknowledged that the 4 Month Notice incorrectly stated that no permits and approvals are necessary. They stated that a Stop Work Order was issued on April 1, 2021 and they subsequently obtained building permits dated June 11, 2021, copies of which were submitted.

I find the landlords have not complied with the Act as the 4 Month Notice incorrectly stated that no permits and authorizations were necessary; as such, necessary permits and approvals were not in place before the issuance of the 4 Month Notice.

I therefore dismiss the 4 Month Notice dated February 25, 2021 which I find is of no force or effect. The tenancy shall continue until ended in accordance with the agreement and the Act.

As a result of my finding, I do not address other issues raised by the parties such as whether vacant possession is required for the repairs or whether the 4 Month Notice was issued in good faith.

The tenant's application is granted, and the 4 Month Notice is dismissed.

### Conclusion

The tenant's application is granted. I dismiss the 4 Month Notice dated February 25, 2021 which is of no force or effect. The tenancy shall continue until ended in accordance with the agreement and the Act.

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: July 09, 2021

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Residential Tenancy Branch