



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, FFT

### Introduction

On February 16, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Notice”) pursuant to Section 49 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing and the Landlord attended as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord with the Notice of Hearing and evidence package by registered mail on or around April 6, 2021 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As this evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Tenants’ evidence and will consider it when rendering this Decision.

The Landlord's evidence was submitted to the Residential Tenancy Branch on July 15, 2021 and he advised that he served this to the Tenants months ago. When reviewing this evidence, it was simply a copy of the Notice that he had amended with a date of a permit of June 14, 2021. As this evidence was not submitted to the Residential Tenancy Branch in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, and as this copy of the amended Notice could not have been served to the Tenants months ago, as it was changed on or around June 14, 2021, I have excluded the Landlord's evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree when the tenancy started but it was on or around September 2017. The parties did agree that rent was currently established at \$773.00

per month, that it was due on the first day of each month, and that a security deposit of \$350.00 and a pet damage deposit of \$50.00 were also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenants by hand on January 28, 2021 and the Tenants confirmed that they received this Notice. The reason the Landlord served the Notice was 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." However, the Landlord did not circle either to indicate how long the unit will be vacant. The Notice indicated that the effective end date of the tenancy would be June 1, 2021. The Landlord detailed the work that would be completed on the Notice as follows:

"Redew [sic] copper piping and valves on all sinks and out of ground. Kitchen to be improved cabinets & tops master bedroom needs closet & dresser removed for new electrical panel & move mast have 8 of rentals all to be done. No water & no power have no accomadation [sic]."

The Landlord advised that he submitted an amended copy of this Notice where he checked off the box indicating that "I have obtained all permits and approvals required by law to do this work." He stated that he acquired an electrical permit on June 14, 2021.

The Landlord submitted that the rental unit is old and that there are electrical and plumbing issues that need to be addressed. There are other issues that require being repaired as well. He stated that the mast needs to be removed, that an electrical panel needs to be installed, and that walls need to be reinforced. In addition, he submitted that the bedroom and living room will be dismantled, that the piping is in rough shape, and that a considerable amount of work needs to be completed.

The Tenants advised that they painted the rental unit out of their own pocket, that the house is not a mess, and that there are no issues with the plumbing or power. As well, they stated that the plugs have all be replaced recently.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenants on January 28, 2021, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*, and I am satisfied that it is a valid Notice.

However, regarding the Landlord then amending the Notice, I find it important to note that the Landlord is not permitted to amend a Notice after it has been served to the Tenants. Clearly the Landlord cannot add to this Notice that he actually required permits to do the work, but then only add that to the Notice months after the Notice was originally served. As such, I find that this is indicative that the Landlord may have actually required permits to complete the alleged renovations but did not have the appropriate permits at the time the Notice was served.

I also find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. In reviewing this Notice and the Landlord's testimony with respect to why the Notice was served, I do not find that the Landlord has provided any documentary evidence to substantiate any of the work, or even the extent of that work, that he was planning on doing to the rental unit.

Ultimately, I am not satisfied that the Landlord provided any documentary evidence to support his testimony for the reason for service of the Notice. For these reasons, I am not satisfied of the validity of the reason the Notice was served. Therefore, I find that the Notice of January 28, 2021 is of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. As such, the Tenants may withhold this amount from the next month's rent.

As a note, the Landlord is cautioned that effective July 1, 2021, the legislation changed pertaining to a Landlord's need to end a tenancy for extensive renovations or repairs. The Landlord must now apply directly to the Residential Tenancy Branch for an Order of

Possession for this type of request. Using the same Notice that the Landlord used in this Application will not be a valid Notice. The Landlord is encouraged to contact the Residential Tenancy Branch for further information.

### Conclusion

Based on the above, I hereby Order that the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit of January 28, 2021 to be cancelled and of no force or 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: July 20, 2021

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Residential Tenancy Branch