



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL-4M, LRE, FFT

### Introduction and Preliminary Matters

On June 4, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking to restrict the Landlord's right to enter pursuant to Section 70 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 18, 2021, this hearing was scheduled to commence via teleconference at 1:30 PM on October 1, 2021.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 27-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term, and he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:57 PM. Only the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in and I also confirmed from the teleconference system that the only other party who had called into this teleconference was the Landlord.

As the Tenant did not attend this hearing, I dismiss his Application without leave to reapply.

The Landlord advised that he served his evidence to the Tenant by hand and by mail approximately two months ago. Based on this undisputed evidence, I am satisfied that

the Tenant has been served with the Landlord's evidence in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and 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

- Is the Tenant entitled to have the Landlord's Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### 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 Landlord advised that he purchased the rental unit approximately four months ago and that he inherited this tenancy from the previous landlord. He stated that the tenancy originally started on April 1, 2016, that rent was currently established at \$1,400.00 per month, and that it was due on the first day of each month. He claimed that a security deposit was also paid, but he is not sure how much was paid, and the written tenancy agreement does not indicate an amount. A copy of the signed tenancy agreement was submitted as documentary evidence.

He submitted that the Tenant was served the Notice on May 8, 2021 by hand and the reason he served the Notice was noted as "I am ending your tenancy because I am going to convert the rental unit to a non-residential use." The effective end date of the tenancy was noted as September 30, 2021.

He then stated that the Tenant was served with a second Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit on July 11, 2021 and the reason he served this second notice was because "I am ending your tenancy because I am going to demolish the rental unit." and "I have obtained all permits and approvals required by law to do this work." The effective end date of the tenancy was noted on this second notice as November 30, 2021.

He testified that he told the Tenant that he was withdrawing the first Notice and that the second notice would be the effective one. He stated that the Tenant was fine with this. The Landlord indicated that the Tenant has paid rent up until the date of the hearing, but he has not received October 2021 rent yet.

### 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 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord intends in good faith to convert or demolish the rental unit.

As the Tenant did not attend the hearing, his Application has been dismissed in its entirety. I note that this Application pertained to the first Notice served May 8, 2021 and that the Tenant did not amend his Application to dispute the second notice of July 11, 2021.

I also note that Policy Guideline # 11 states that a "notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant." In addition, it states that "Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant."

While the Tenant disputed the first Notice initially, given that he has paid rent up until the date of the hearing, that he continues to occupy the rental unit past the effective end of tenancy date of the first Notice, and that the Landlord testified to having a conversation with the Tenant where the parties agreed that the first Notice would be waived, I am satisfied that there is sufficient evidence here that there was an implied waiver of this first Notice being withdrawn.

As such, I find that the second Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit is the only live notice that could affect the status of this tenancy. As the Tenant has not disputed this second notice, I have not heard any

submissions or made any findings with respect to the reason this second notice was served.

As the Tenant did not attend the hearing and his Application was subsequently dismissed, I am satisfied that he was not successful in this Application. Consequently, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

### Conclusion

As the Tenant did not attend this hearing, I dismiss the Tenant's Application for Dispute Resolution without leave to reapply.

Based on the above, I am satisfied that the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit of May 8, 2021 has been withdrawn. This tenancy continues until ended in accordance with 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: October 1, 2021

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Residential Tenancy Branch