



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sandhill Development (Richmond)  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL-4M, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Notice) issued by the landlord; and
- recovery of the filing fee.

The tenant, the landlord and the representatives for the named business of the landlord (collectively, landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing 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, all parties affirmed they were not recording the hearing.

The parties confirmed receiving the other's evidence and the landlord confirmed receiving the tenant's application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

- Should the Notice be cancelled?
- If the Notice is not cancelled, is the landlord entitled to an order of possession for the rental unit?
- Is the tenant entitled to the recovery of the cost of the filing fee?

#### Background and Evidence

There was no written tenancy agreement filed in evidence. The tenant said without dispute that the tenancy began on June 1, 2016 and current monthly rent is \$2,384.

The undisputed evidence is that the landlord served the tenant with the Notice on September 30, 2021, by placing the document in the tenant's mailbox.

The tenant filed her application to dispute the Notice on or about October 25, 2021.

The tenant filed a copy of the Notice, which was signed by the landlord on September 30, 2021, and listed an effective date of January 31, 2022. The landlord listed on the Notice that they are going to demolish the rental unit and that they have obtained all permits and approvals require by law to do the work. Below this statement, the landlord wrote on the Notice that the demolition permit was issued by the local municipality on August 30, 2021, with the permit number also being listed.

While the landlord did not file any documentary evidence to support their Notice, the tenant submitted copies of attached documentation. One document was a DEMOLITION PERMIT, dated August 30, 2021, which contained a description, stating that the permit was "CONDITIONAL DEMOLITION ONLY".

Another document was also entitled, "DEMOLITION PERMIT", was also dated August 30, 2021, and had the same permit number. This permit also contained a description, stating that the permit was "CONDITIONAL DEMOLITION ONLY".

The third and last attached document "DEMOLITION PERMIT", was dated October 12, 2021, and had the same permit number, but with a different expiry date. This permit also contained a description, stating that the permit was "CONDITIONAL DEMOLITION ONLY". The description also stated the "Expiry date extended due to delay at LTB hearing, tenants to vacate by Feb 28/21- Conditional Demo extended to "March 26/21".

In support of their Notice, the landlord said that they have been trying to sell for a year, but said it is best to demolish and sell.

The landlord submitted that they extended the expiry date of the permits, due to the dispute resolution hearing and that they have a right to subdivide the property and then demolish it.

The tenant questioned whether the landlord intended to demolish the rental unit. They submitted a copy of an email from a real estate agent to one of the apparent landlords. This email stated that the real estate firm represents the sellers to actively market the three referenced properties, one being the residential property, to sell the properties to potential buyers as 3 vacant homes or "4 single lots demolished and ready to build lots".

There was a reference to a previous dispute resolution hearing between the parties involving another Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit issued by the landlord. However, neither party filed that Decision or any evidence from that hearing.

### Analysis

Based on the documentary and oral evidence and on the balance of probabilities, I find the following.

The landlord's Notice in this case was issued pursuant to section 49(6)(a) of the Act, which provides "a landlord may end a tenancy in respect of a rental unit if the landlord had all necessary permits and approvals required by law, and intends in good faith to demolish the rental unit." Section 49(8)(b) provides that a tenant may dispute the Notice by making an application within 30 days of receiving it.

I find the tenant disputed the Notice within the allowable time frame.

When a tenant makes an application seeking cancellation of a Notice to End a Tenancy within the allowable time period, the landlord must prove the reason they wish to end the tenancy.

In this case, the landlord provided no documentary evidence to support their Notice, as the only evidence was an email confirmation from the tenant that she received the Notice, photos of the envelope containing the Notice left in the tenant's mailbox and an email from the landlord to the tenant about issuing another "4 months' notice" after the last hearing.

The only evidence regarding the contents of the Notice or the Notice itself with attachments was submitted by the tenant, not the landlord.

Tenancy Policy Guideline (Guideline) 2(b) states as follows:

*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.*

After further review and consideration of the permit documents and the Notice, along with consideration of the requirements of Tenancy Policy Guideline (Guideline), I am not satisfied that the landlord had all the necessary permits and approval required by law prior to issuing the Notice dated September 30, 2021.

The only permits provided were **conditional** permits, not final permits. Guideline 2(b) states as follows:

*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.***

*[My emphasis added]*

The landlord failed to provide a copy of the policy or procedure which establishes the conditions and shows that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy. I find the landlord submitted insufficient evidence of what prevented the permits from being made a final permit, rather than a conditional permit, or what steps the landlord was required to perform to lift the condition.

At the very least, I would expect something in writing from the city indicating what the condition was and/or how the condition would be lifted. Instead, the landlord had nothing in writing submitted regarding demolition permit requirements.

For the above reasons, I therefore find the landlord has failed to meet the burden of proof and **I cancel** the Four Months' Notice dated and issued on September 30, 2021. The Four Months' Notice is of no force or effect.

**I order** the tenancy to continue until ended in accordance with the Act.

As a result of her successful application, I allow the tenant recovery of her filing fee of \$100.

I direct the tenant to deduct \$100 from a monthly rent payment as recovery of her filing fee. The tenant should inform the landlord when she makes such deduction.

### Conclusion

The Four Months' Notice issued by the landlord is cancelled and is of no force or effect.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant is directed to deduct \$100 from a monthly rent for recovery of her filing fee.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 22, 2021

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Residential Tenancy Branch