



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEDINGHAM MCALLISTER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL-4M

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Four Months' Notice to End Tenancy for Demolition or Conversion of a Rental Unit, dated September 24, 2021 ("4 Month Notice"), pursuant to section 49(6).

The landlord's two agents, "landlord DG" and "landlord SG," the tenant, and the tenant's English language translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. with me and the landlord's two agents present. The tenant and her translator called in late at 9:36 a.m. The tenant claimed that she was told by the Residential Tenancy Branch ("RTB") to call in 5 minutes late to the hearing. The tenant then left the conference at 9:41 a.m. and called back in at 9:43 a.m., to use a different phone because I could not hear her properly. I informed the tenant about what occurred in her absence, as no evidence was discussed with the landlord's two agents. The hearing ended at 10:17 a.m., after 47 minutes total.

Landlord DG confirmed that he was the vice president of development and landlord SG confirmed that she was the junior development manager, both employed by the landlord company ("landlord") named in this application. Both landlord agents confirmed that they had permission to represent the landlord at this hearing. Landlord DG confirmed that the landlord owns the rental unit, stated the rental unit address, and provided an email for me to send this decision to the landlord after the hearing.

The tenant confirmed that her daughter had permission to assist her with English language translation if she needed it, at this hearing. The tenant's translator did not testify or assist with translation at this hearing. The tenant confirmed her rental unit address and asked that I mail a copy of this decision to her after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The landlord's two agents both separately affirmed, under oath, that they would not record this hearing. The tenant confirmed that neither she, nor her translator, would record this hearing.

I explained the hearing process and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing. The tenant affirmed that she did not want to settle this application.

Landlord DG confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The landlord provided a 38-page evidence package. The tenant only submitted a one-page photograph of a partial letter from the landlord, dated September 24, 2021, as evidence for this hearing.

The tenant confirmed receipt of the landlord's 4 Month Notice on September 24, 2021, by way of posting to her rental unit door. Landlord SG confirmed the above service method and date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 4 Month Notice on September 24, 2021. The landlord provided a copy of the notice for this hearing.

#### Issues to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in October 2007 in a one-bedroom unit and in March 2009 in a different two-bedroom unit, both at the same rental property. A written tenancy agreement was signed by the tenant, for a tenancy beginning on March 1, 2009. Monthly rent in the current amount of \$1,070.00 is payable on the first day each month. A security deposit of \$460.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is an apartment in a multi-unit residential building.

Both parties agreed that the landlord issued the 4 Month Notice to the tenant, with an effective move-out date of January 31, 2022. The 4 Month Notice indicates the City issuing authority, the permit number, and the demolition permit description. Both parties agreed that the notice was issued for the following reason:

- *...demolish the rental unit;*
  - *I have obtained all permits and approvals required by law to do this work...*

Both parties agreed to the following facts. The landlord obtained a demolition permit, dated September 23, 2021, from the City. It indicates that the rental property, at the address indicated on the cover page of this decision, which is a three-storey 35-unit apartment building, will be demolished. The tenant was offered \$13,840.00 to help with moving expenses but she rejected that offer from the landlord. The tenant received a letter, dated September 24, 2021, from the landlord. This letter includes information about section 49 of the *Act*, the 4 Month Notice, links to the RTB website, details of the demolition, and a right of first refusal. The tenant rejected the right of first refusal from the landlord, to occupy one of the new units at the newly constructed building, at market rent. The tenant did not attend the June 28, 2021, public hearing with the City, regarding the demolition of the rental property, despite receiving notice from the landlord and the City, regarding same. The landlord sent the tenant letters from April 2021 to December 2021, regarding the demolition and updates, the City hearings and process, the RTB process, the 4 Month Notice, section 49 of the *Act*, and reference letters and emails on behalf of the tenant to find her a placement with BC Housing. All

of the above evidence was provided by the landlord for this hearing and received by the tenant.

Landlord DG stated the following facts. The landlord will be moving forward with the demolition. All tenants must vacate the rental property by January 31, 2022. The landlord must complete hazardous material testing abatement and then demolition can occur. The demolition date depends on the completion of the above testing, but the plan is to begin by February 1, 2022. The tenant has refused to vacate the rental unit, stating that the demolition can occur “over her head” and she wants to move back into a new unit at the new building at the same rent of \$1,070.00 per month. The landlord is concerned that the tenant will not vacate by January 31, 2022, as required. The landlord does not work for BC Housing and cannot provide the tenant with a guarantee that she will be placed by them, even in the new building which offers subsidized rates with BC Housing. The landlord will continue to assist the tenant to find BC Housing placement, as it has already done so.

The tenant testified regarding the following facts. She believes that the landlord is being truthful about demolishing the rental unit and thinks that the demolition permit is valid. She does not believe that the landlord is acting in bad faith or lying about its intentions or permit. She cannot move out of the rental unit because she cannot find another place to live at the same rent that she is paying now. She found another place that is \$2,500.00 per month, which is too expensive for her. She cannot afford another place with higher rent because she is a single mother that has a 17-year-old daughter. She needs to be near her daughter’s school. She cannot be on the street or in a shelter with her daughter. She does not know why she did not attend the public hearing with the City on June 28, 2021, to voice her concern about them demolishing the rental property and building a new place. She does not understand why the City needs to demolish a building and make money. The \$13,840.00 is not enough money from the landlord to move; even \$20,000.00 or \$50,000.00 would not be enough money because she cannot afford anywhere else to live. She wants a guarantee from the landlord that they will find her a placement with BC Housing in the subsidized units at the new building or another place.

### Analysis

According to subsection 49(8)(b) of the *Act*, the tenant may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after she received the notice. The tenant received the 4 Month Notice on September 24, 2021 and filed her application to dispute it on October 14, 2021. Therefore, the tenant is within the thirty-

day time limit under the *Act*. Accordingly, the burden shifts to the landlord to prove the reason on the 4 Month Notice.

Subsection 49(6)(a) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law to demolish the rental unit.

Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, states the following, in part, at pages 3 and 4:

### *GOOD FAITH*

*In Gichuru v. Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.*

*Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or 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 (section 32(1) of the RTA).*

...

### *C. DEMOLITION*

*Section 49(6)(a) of the RTA allows a landlord to end a tenancy to demolish a rental unit. Demolition means the complete and irreversible destruction of the rental unit. Usually, but not always, this involves the destruction of the building containing the rental unit. This may also involve partial demolition of a building so that the rental unit ceases to exist.*

*If the tenancy is ending under section 49(6)(a), the tenant has no right of first refusal to enter into a new tenancy agreement with the landlord for the rental unit.*

Based on a balance of probabilities and for the reasons outlined below, I find that the landlord has met its onus of proof to show that the 4 Month Notice was issued to the tenant, in good faith, to demolish the rental unit.

I find that the landlord intends to demolish the rental unit and has all the necessary permits and approvals required by law, at this stage, with tenants still occupying the rental building. The landlord obtained a valid demolition permit from the City for the entire rental property, listing the site address, the location, the legal lot and zone numbers, the name of the landlord's agent, landlord SG who appeared at this hearing, the owner's name, the permit number, the issued date of September 23, 2021, the work proposed as "complex demolitions" and the description of: "apartment – low-rise" and "Conditional Demolition Permit – subject to satisfaction of the conditions set out below, Demolition of 3 storey apartment building." Landlord DG and landlord SG confirmed all of the above information during this hearing.

The validity and authenticity of the demolition permit were not disputed by the tenant. The landlord obtained this permit on September 23, 2021, which is indicated as the issue date on page 1 of the permit, before the landlord issued the 4 Month Notice, dated September 24, 2021, to the tenant to end her tenancy. The demolition permit is signed and dated by landlord SG and the inspector for the City.

I accept landlord DG's affirmed testimony that this demolition permit is required as the first stage of the demolition process, as further requirements for hazard material testing abatement must be met, before the demolition can begin. I accept landlord DG's affirmed testimony that the rental property is still occupied by tenants, who must vacate by January 31, 2022, which is a future date after this hearing on December 20, 2021. The demolition permit indicates that the landlord must comply with the demolition checklist "for the purposes of abatement and preparation of the structure for demolition." Therefore, demolition cannot occur yet, until the above conditions are met.

I accept the landlord's 38-page detailed evidence package, which the tenant said she received, including the 4 Month Notice, the demolition permit, the tenancy agreement, and the numerous letters and emails sent to the tenant regarding the demolition and on behalf of the tenant to support her request for subsidized housing. The tenant did not submit any documentary evidence for this hearing, aside from a photograph of one page of a letter from the landlord, dated September 24, 2021.

I find that the tenant failed to show that the landlord engaged in any bad faith, dishonest motive or purpose, ulterior motive, or attempt to avoid legal obligations under the *Act*, by issuing the 4 Month Notice to end this tenancy. The tenant provided repeated affirmed testimony that she did not believe the landlord was acting in bad faith or that the demolition permit or the intention of the landlord to demolish the rental property was dishonest in any way. The tenant simply indicated that she could not afford to move, and she wanted the landlord to guarantee a subsidized rent in that area, which are not relevant considerations, nor are they required by the *Act* or the 4 Month Notice.

Accordingly, I dismiss the tenant's application to cancel the landlord's 4 Month Notice. The landlord is entitled to an order of possession under section 55 of the *Act*, effective on January 31, 2022, the effective date of the notice. I find that the landlord's 4 Month Notice complies with section 52 of the *Act*.

The landlord is obligated to provide one month's free rent compensation of \$1,070.00 to the tenant, prior to her tenancy ending, as required by the 4 Month Notice, dated September 24, 2021, and section 51 of the *Act*.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on January 31, 2022. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 20, 2021

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Residential Tenancy Branch