



# Dispute Resolution Services

Page: 1

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-4MN, FFT

### Introduction

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

- cancellation of the landlords' 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated November 26, 2021 ("4 Month Notice"), pursuant to section 49(6); and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The individual landlord ("landlord"), the landlords' agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 66 minutes from 11:00 a.m. to 12:06 p.m.

All hearing participants confirmed their names and spelling. The tenant provided her email address for me to send this decision to her after the hearing.

The landlord confirmed that the landlord company owns the rental unit. She provided the rental unit address. She said that she owns the landlord company and she had permission to speak on its behalf at this hearing (collectively "landlords"). She stated that her agent had permission to represent her and the landlord company at this 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*. The landlord, the landlords' agent and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties engaged in settlement negotiations but were unable to settle this application, so they asked that I make a decision about it. Both parties confirmed that they were ready to proceed with this hearing.

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

The tenant confirmed personal receipt of the landlords' 4 Month Notice on November 26, 2021. The landlords' agent confirmed that the notice was served on the above date using the above method. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 4 Month Notice on November 26, 2021.

#### Issues to be Decided

Should the landlords' 4 Month Notice be cancelled? If not, are the landlords entitled to an order of possession?

Is the tenant entitled to recover the \$100.00 filing fee paid for this application?

#### 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 on June 1, 2016. Monthly rent in the current amount of \$2,234.00 is payable on the first day each month. A security deposit of \$1,050.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties.

Both parties agreed that the landlords issued the 4 Month Notice, with an effective move-out date of March 31, 2022, for the following reason:

- *demolish the rental unit*

The landlords' agent stated the following facts. The landlords seek an order of possession based on the 4 Month Notice. The landlords are the developer and want to do demolition. The landlords got a permit to do demolition. No one can live at the rental unit, and they have to cut the power, gas, and water, before they can get a final permit for demolition from the City. The City has renewed the permit three times and provided an email saying that they cannot issue a final permit until the above has occurred. That is why there is only a conditional permit at this time. The landlords have to do the demolition when the weather is good, which is now. The landlords tried to sell the rental unit before, but could not do so. So, the landlords got a permit for demolition. The City will not give the landlords another permit because they know about the situation with the tenant, which has been ongoing for two years, and no demolition has occurred but they keep issuing permits to the landlords. There was a previous RTB hearing on November 22, 2021, for which the landlords' agent provided a file number, not a copy of the previous RTB decision. At the previous RTB hearing, the landlords' conditional permit was not accepted, and they were told to issue another notice to the tenant and provide additional information, including the landlords' plans for subdivision. After that decision was issued, the landlords gave the tenant the current 4 Month Notice and provided all the information requested in the previous RTB decision, including the conditions and permit for the subdivision, for this hearing. The City said they cannot issue a final permit until the tenant leaves.

The tenant stated the following facts. She disputes the landlords' 4 Month Notice and believes that she does not have to move out. The expiry date on the conditional permit of March 26, 2022 is wrong. That date has already passed so the landlords can no longer demolish the rental unit. The effective move-out date on the 4 Month Notice says March 31, 2022, even though the permit already expired on March 26, 2022. The tenant received the landlords' conditional permit and email, including the explanation from the City. However, the conditional permit provided by the landlords is not signed by anyone and has no information on the bottom of the permit. The landlords have been trying to evict the tenant for a long time and both parties have attended two prior hearings, where the tenant was successful in both, even though the landlords appealed the last decision and lost. The landlords keep providing conditional permits and documents that are not valid to evict the tenant.

## Analysis

### Legislation and Rules

I informed the landlords during this hearing, that they are required to present their evidence regarding the 4 Month Notice.

The following RTB *Rules* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord and her agent failed to properly go through their evidence and documents submitted for this hearing.

This hearing lasted 66 minutes, so the landlord and her agent had ample opportunity to present their submissions regarding the 4 Month Notice. I provided them with multiple opportunities to present their evidence and documents and respond to the tenant's submissions. I repeatedly asked them if he had any other information to present during this hearing. I repeatedly asked them questions about their documents and asked them to explain same, but they failed to do so in a sufficient or specific manner. They did not even reference their documents, except when I asked them to do so.

Findings

According to subsection 49(8)(b) of the *Act*, a tenant may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after she receives the notice. The tenant received the 4 Month Notice on November 26, 2021 and filed her application to dispute it on December 20, 2021. Therefore, the tenant is within the thirty-day time limit under the *Act*. The onus shifts to the landlords to prove, on a balance of probabilities, the basis of the 4 Month Notice.

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

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that they issued the 4 Month Notice in good faith to demolish the rental unit.

The conditional demolition permit provided by the landlords does not have the name, signature, phone number, or issuing authority on the bottom of page 1 of the document. Further, the conditional permit expired on March 26, 2021, prior to the effective move-out date of March 31, 2021, indicated by the landlords on the 4 Month Notice.

The tenant raised the above issues during this hearing and neither the landlord, nor her agent responded, despite being given multiple opportunities to do. I asked the landlord and her agent about the above issues multiple times during this hearing and they both failed to respond to same.

The landlords did not provide an extension of the conditional permit, or sufficient documentary or testimonial evidence to indicate that the permit was valid beyond March 26, 2021.

Both parties confirmed that they attended another RTB hearing, prior to November 22, 2021, but neither party provided the date or a copy of the decision from that hearing. Both parties agreed that the landlords' 4 Month Notice was cancelled at that time and the tenancy was ordered to continue, as per the Arbitrator.

Both parties confirmed that they attended a previous RTB hearing on November 22, 2021, the file number of which appears on the front page of this decision. Neither party provided a copy of the previous RTB decision for this hearing. Both parties agreed that the landlords' 4 Month Notice was cancelled at that time and the tenancy was ordered to continue, as per the Arbitrator.

The landlords claimed that they had to wait for the previous RTB decision on November 22, 2021, regarding the previous 4 Month Notice, before they could issue the current 4 Month Notice to the tenant. The landlords are fully aware of the standard of proof and the documentation required for the 4 Month Notice application, as this information is contained in the previous RTB decision from November 22, 2021. This previous RTB decision references the same conditional permit obtained by the landlords, and specifically indicates that it expires on March 26, 2022, in that decision.

The landlords had ample time to provide the above documentation and evidence, as the tenants' application to dispute the 4 Month Notice was filed on December 20, 2021, and this hearing occurred on March 31, 2022, over three months later. The landlords were able to obtain multiple conditional permits and extensions previously but failed to provide sufficient evidence of same for this hearing.

Accordingly, I allow the tenant's application to cancel the landlords' 4 Month Notice. The landlords' 4 Month Notice, dated November 26, 2021, is cancelled and of no force or effect. The landlords are not entitled to an order of possession under section 55 of the *Act*. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

The tenants' application to cancel the landlords' 4 Month Notice is granted. The landlords' 4 Month Notice, dated November 26, 2021, is cancelled and of no force or effect.

The landlords are not entitled to an order of possession under section 55 of the *Act*. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from future rent payable to the landlord, on a one-time basis only, in full satisfaction of the monetary award for the 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*.

Dated: April 1, 2022

---

Residential Tenancy Branch