



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL-4M

### Introduction

On April 29, 2022, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

Landlord K.S. attended the hearing, with S.B. attending as an agent for the Landlords. B.C. attended the hearing stating that he was the Tenant. The Landlord advised that he did not create a written tenancy agreement as per Section 12 of the *Act*. However, he stated that B.C. provided him with identification in the name of the Respondent, as noted on the Application, while B.C. advised that that was not his name. As the Landlord has no documentary evidence supporting who his Tenant actually is, the named Respondent has been left on the Style of Cause on the first page of this Decision. However, this hearing proceeded with B.C. either being the Tenant, or as a representative of the named Respondent/Tenant.

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. As well, all parties in attendance provided a solemn affirmation.

S.B. advised that the Notice of Hearing package was served to the Respondent by

registered mail on May 13, 2022 (the registered mail tracking number is noted on the first page of this Decision). He stated that the package was returned to sender. B.C. confirmed that he did not receive this package as it was addressed to a different person, so he could not retrieve it. However, he acknowledged that he did receive this package in May 2022 as it was left at the rental unit. As such, I am satisfied that B.C. was served with the Notice of Hearing package.

S.B. then advised that the Landlords' evidence was served to B.C. by hand in May 2022, but he could not explain why this evidence was submitted to the Residential Tenancy Branch so late, and not in accordance with the timeframe requirements of Rule 3.14. of the Rules of Procedure (the "Rules"). His main reasoning for this late submission was that the Landlords "were not told" about any deadlines. He was reminded that the Notice of Hearing package would have included relevant information for the Landlords regarding service of documents.

B.C. advised that he was not served the Landlords' evidence in May 2022. Given this testimony, and the fact that the Landlords submitted this evidence to the file late, I have excluded this evidence and will not consider it when rendering this Decision.

B.C. advised that he did not submit any documentary evidence for consideration on this file.

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.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit?

#### 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.

As noted earlier, the Landlords failed to create a written tenancy agreement, and the parties could not agree when the tenancy started. S.B. advised that the tenancy began on March 1, 2021, that rent was established at an amount of \$3,000.00 per month, and that it was due on the first day of each month. Neither a security deposit, nor a pet damage deposit were paid. It was evident that the Landlords took little interest in understanding their rights and obligations as Landlords under the *Act*.

B.C. advised that the tenancy started in November 2021, that he paid \$500.00 per month to K.S. for a room on the property, that rent was due on the first day of each month, and that he would collect the remaining balance of \$2,500.00 from other people living in the property, and then pay total of \$3,000.00 to the Landlords. He confirmed that neither a security deposit nor a pet damage deposit was ever paid.

K.S. advised that the Notice was served to B.C. by hand on December 27, 2021. The Landlords noted the name of the Tenant on the Notice as the same named Respondent on this Application. As well, the copy of the Notice that was submitted as documentary evidence was not signed. The Landlords indicated on the Notice that it was served due to demolition of the rental unit. Moreover, the Landlords checked off the box "I have obtained all permits and approvals required by law to do this work." On the Notice though, the Landlords noted a Salvage and Abatement permit number, they indicated that asbestos would be removed which required the rental unit to be vacant, and then they stated that the rental unit will be demolished in order to construct a duplex. There was no documentary evidence submitted to support the reason chosen on the Notice. When S.B. was asked why there was no documentary evidence submitted, he again stated that the Landlords "were not told" that they were required to submit supporting evidence. The effective end date of the tenancy was indicated as April 30, 2022 on the Notice.

B.C. confirmed that this Notice was received and that it was signed by the Landlord.

### 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 the Landlords must be signed and dated by the Landlords, 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.

As a note, as of July 1, 2021, the legislation changed prohibiting the Landlords from serving a Four Month Notice for extensive renovations or repairs. Instead, the Landlords would be required to apply for an Order of Possession directly from the Residential Tenancy Branch. Any Notice served for extensive renovations or repairs after this date would be invalid.

However, Section 49(6) of the *Act* does permit the Landlords to end a tenancy in respect of a rental unit if the Landlords have all the necessary permits and approvals required by law, and intend in good faith, to do any of the following:

- (a)demolish the rental unit;*
- (b)[Repealed 2021-1-13.]*
- (c)convert the residential property to strata lots under the Strata Property Act;*
- (d)convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;*
- (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*
- (f)convert the rental unit to a non-residential use.*

In considering this matter, I have reviewed the Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. While the Landlords have named a person on the Notice and the Application as their Tenant, they have not provided any documentary evidence that this person was, in fact, their Tenant. B.C. attended the hearing claiming to be their Tenant, but clearly, he was not the person named as the Landlords' Tenant on the Notice or on the Application. As such, I am not satisfied of who the person named on the Notice was in relation to the Landlords.

Furthermore, the planned work listed on the Notice appeared to indicate that extensive renovations or repairs would be conducted. As noted above, should the Landlords wish to complete extensive renovations or repairs, this Notice cannot be used, and the Landlords must apply directly for an Order of Possession instead.

However, the planned work listed on the Notice also appeared to indicate that demolition would occur. While this Notice may be served for the purpose of demolition of the rental unit, I note that the burden of proof for substantiating the reason why the Notice was served is on the Landlords. The Landlords submitted no documentary evidence to support that they had all the necessary permits and approvals required by law to demolish the rental unit. I do not accept S.B.'s claims that the Landlords were not told by anyone that they were required to submit supporting evidence to be an adequate excuse for a lack of corroborative evidence. The Landlords were provided with the relevant information, with the Notice of Hearing package, pertaining to preparing for a Dispute Resolution Proceeding.

When reviewing the totality of the evidence before me, I am not satisfied that the Notice is valid. Even if I were to accept that the person named on the Notice was the Landlords' Tenant, and that the Notice was served due to demolition of the rental unit, I do not find that the Landlords have provided any compelling or persuasive documentary evidence to satisfy the burden of proof that they would be demolishing the rental unit. As such, I find that the Notice dated December 1, 2021 is cancelled and of no force or effect. In addition, the Landlords' Application is dismissed without leave to reapply.

### Conclusion

The Landlords' Application is dismissed without leave to reapply. This tenancy continues until ended in a manner 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: August 31, 2022

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Residential Tenancy Branch