



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC1338503  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNL-4M**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for an order to cancel a 4 Month Notice to End Tenancy Demolition, or Conversion of the Rental Unit to Another Use pursuant to section 49.

Both the tenant and the landlord attended the hearing. The landlord was represented by it’s agent, AW. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### **Issue(s) to be Decided**

Should the landlord’s notice to end tenancy be upheld or cancelled?

### **Background and Evidence**

The landlord gave the following testimony. The rental unit is the lower unit located in a single-family home with both an upper unit and lower unit. The tenancy began with a previous landlord. The landlord’s company purchased the rental unit and took over the tenancy on January 7, 2022. Rent is currently set at \$1,200.00 per month, payable on the first day of each month.

On August 30, 2022, the landlord served the tenants a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use via email. A copy of the notice to end tenancy was provided as evidence. It states the landlord is ending the tenancy because the landlord is going to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord testified that the current caretaker is the tenant occupying the upper unit of the house. That unit is 3 bedrooms and that this occupant "P" may have one employee living with him. The landlord's intention is to renovate the rental unit to eliminate the "illegal" lower unit and revert the home to a single-family residence.

The occupant of the upper unit is a contractor who does work for the landlord on an occasional basis. The landlord testifies the occupant of the upper unit is the "caretaker of the whole house". He looks after this property and maintains it. The landlord has other properties and the house where the tenant resides is one of them. This person is not salaried employee of the landlord; the landlord pays this person per contract when hired for work.

The layout of the upper unit is approximately 1200 square feet. It is a 3 bedroom unit, fully renovated. The landlord seeks to renovate the house to make it safe by converting it back to a whole house. The landlord testified that he does not have permits to perform the work but will acquire it at a later date. The landlord suggested the occupant of the upper unit, "P" may do the renovation work.

The tenant relies on her written statement for her submissions. She states the upper unit was empty when the landlord took possession of the house in January 2022. After a renovation, the upper unit was beautiful and it was rented out to "P" on May 2022. The occupant "P" and the tenant get along very well and share the internet connection which is in "P's" name. "P" also agreed to add a telephone line, paid for by the tenant.

The tenant challenges the landlord's good faith in ending her tenancy. The tenant submits that the landlord's intent is to do similar renovations as they did to the upper unit and collect between \$2,000.00 to \$2,500.00 rent instead of the \$1,200.00 rent she currently pays. The tenant testified that if the landlord wants to renovate the lower unit, she would be willing to vacate it for a short time, keeping the tenancy intact.

### Analysis

The landlord served the 4 Month Notice to End Tenancy upon the tenant via email on August 30, 2022. The notice to end tenancy is deemed served upon the tenant on

September 2, 2022, 3 days after being sent by email in accordance with sections 43 and 44 of the Residential Tenancy Regulations. The tenant filed an application to dispute the notice to end tenancy on September 26<sup>th</sup>, within the 30 days as required by section 49(8)(b) of the *Act*.

The landlord seeks to end the tenancy under section 49(6) of the *Act* which reads:

**49 Landlord's notice: landlord's use of property**

(6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends 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.

Residential Tenancy Branch Policy Guideline 2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] states at Part B:

**B. PERMITS AND APPROVALS REQUIRED BY LAW**

“Permits and approvals required by law” can include:

- demolition, building or electrical permits issued by a municipal or provincial authority;
- a change in zoning required by a municipality to convert the rental unit to a non-residential use; or
- a permit or license required to use it for a new purpose.

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.

...

The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made.

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority

stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

The landlord testified that his intent was to convert the home back to a single-family dwelling – to “make it safe” as he didn’t trust that it was safe. He testified that he does not have any permits or approvals to do the work, but he will acquire them after the tenant vacates the rental unit. The landlord gave no indication that the conversion of the two units into a single home would not require permits. For this reason, I find the landlord did not have all the necessary permits and approvals required by law, as required by section 49(6) of the Act.

The Cambridge Dictionary defines a caretaker as a person employed to take care of a large building, such as a school, and who deals with the cleaning, repairs, etc. The landlord testified that “P”, the occupant of the upper unit, is not an employee of his, but a contractor he occasionally hires out to perform work on a contractual basis. He acknowledges he collects rent from “P” and that “P” looks after the property and maintains it. I would expect “P” would, as a tenant, maintain the residential property he resides at, given that the property is a single-family home. The landlord’s testimony was also clear in that he did not compensate “P” with wages for his work to maintain the home where he resides. As “P” is not the landlord’s employee, I find to classify him as a caretaker for the landlord would be unreasonable.

Lastly, “P’s” unit is a 3-bedroom unit and the landlord testified that “P” may have an employee who lives with him. The tenant has argued the landlord has an ulterior motive for ending the tenancy, namely to re-rent the unit to another tenant after doing some renovations. She has questioned the “good faith” of the landlord. 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.

While the landlord testified that “P” requires the additional room of the 3-bedroom lower unit as caretaker, he didn’t provide a satisfactory explanation of why the additional room was required or why the space being rented by “P” was insufficient. Most tellingly, the landlord never called “P” as a witness or provide a written statement from him. As “P” was already living in a rental unit owned by the landlord, I do not find it credible that he would require any additional room to perform the function as the landlord’s caretaker. I find it more likely than not that the landlord intends on renovating the tenant’s unit and re-renting it at a higher cost.

I make the following findings:

- the landlord did not have all the necessary permits and approvals required by law, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property as required by section 49(6) of the *Act*.
- the tenant identified as “P” is not a caretaker
- I do not find the landlord has shown good faith in ending the tenancy

For these reasons, I cancel the landlord’s notice to end tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

This tenancy shall continue until it is 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: November 10, 2022

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Residential Tenancy Branch