



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- cancellation of a Four Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Four Month Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file. The landlord did not serve its evidence package on the tenant; however, this was not an issue as aside from a brief statement, the landlord's evidence package did not contain anything new that the tenant would not have previously had a copy of such as the tenancy agreement and the Four Month Notice.

### **Issues**

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

Is the tenant entitled to recover the filing fee for this application?

### **Background & Evidence**

The rental unit is one-bedroom suite in a complex which contains 5-6 other units also owned by the landlord. The tenancy began October 1, 2013. The current monthly rent is \$702.94.

The landlord initially served the tenant with a Four Month Notice on August 1, 2022. However, as the first notice was an older version of the form, the landlord re-issued the Four Month Notice on September 28, 2022. The tenant's application to dispute the Four Month Notice was filed within the time period required under the Act. The Four Month Notice was issued on the following ground as per section 49(6)e of the Act:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

On the Notice, the landlord checked off the box that no permits or approvals are required by law to do this work. On the Four Month Notice, the landlord listed various renovation work to be completed including replacing fixtures, repairing and/or replacing cabinets, replacing flooring, adding a new closet etc.

The landlord F.S. testified that he is 74 years old and that both he and his wife are experiencing age and health issues such that they are looking to hire a caretaker to reside on the rental property to help with clearing snow and other maintenance work.

The tenant is disputing the Four Month Notice on the grounds that the landlord did not follow proper procedures in issuing the notice. The tenant submits that the landlord did not obtain any permits before issuing the notice nor did the landlord provide any evidence that permits are not required. The tenant argues there are six other units in the building that the landlord could have utilized for a caretaker, but the landlord only chose his unit as he is a long-term tenant at a lower rent.

In reply, the landlord submits that the other units are bachelor suites, and one is a two-bedroom unit; therefore, these other units are not as fitting for use by a caretaker. As far as permits, the landlord submits that to his knowledge no permits would be required for doing minor renovation work such as painting or changing sinks.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Four Month Notice by making an application for dispute resolution within thirty days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Four Month Notice.

In accordance with section 49(6) of the Act, a landlord must obtain the necessary permits or approvals required by law prior to issuing a Four Month Notice under this section. The landlord submits that permits are not required for conversion of use by a caretaker or for the minor renovation work planned; however, the landlord did not provide any evidence in support of permits not being required. As the Act requires necessary permits and approvals to be in place, the onus is on the landlord to provide evidence to support they would not be required in the case at hand.

Accordingly, the Four Month Notice to End Tenancy dated September 28, 2022, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

### Conclusion

I allow the tenant's application to cancel the landlord's Four Month Notice, dated September 28, 2022, which is hereby cancelled and of no force or effect. This tenancy continues 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: December 02, 2022

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Residential Tenancy Branch