



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNL-4M, FFT

### **Introduction**

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

- Cancel two Four Month Notices to End Tenancy for Demolition of the Rental Unit (the "**September Notice**" and the "**November Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. The landlord attended the hearing and was assisted by his daughter. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the September Notice and the November Notice; and
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 15, 2021. Monthly rent is \$3,907.75 and is payable on the 15<sup>th</sup> day of each month. The tenants

paid the landlord a security deposit of \$1,925 and a pet damage deposit of \$1,925, which the landlord continues to hold in trust for the tenants.

The parties agree that the landlord served the tenants with the September Notice on September 26, 2022. It specified an effective date of January 31, 2023. It listed the reason for ending the tenancy as the landlord intends to demolish the rental unit. The landlord listed the planned work as “to demolish the old house and build new home.” He wrote “I will get the permits in January 2023”.

The tenants disputed the September Notice on October 18, 2022.

The tenants argued that the September Notice was invalid because the landlord did not have the required permits to undertake the work.

The landlord issued the November Notice on November 29, 2022. It specified an effective date of March 31, 2023. It listed the reason for ending the tenancy as the landlord intends to demolish the rental unit. The landlord indicated that he “had obtained all permits and approvals required by law to do this work.” He listed one permit on the November Notice: a demolition permit issued November 29, 2022 (the “**Demolition Permit**”). He submitted a copy of this permit into evidence.

The tenant amended this application to include a request to cancel the November Notice on December 19, 2022. While the tenants agree that the Demolition Permit entered into evidence is valid and genuine, they argued that the landlord has not obtained *all* permits necessary to undertake the work specified on the November Notice. Specifically, they argued that the landlord had not yet obtained a building permit allowing him to build the new house once the rental unit is demolished.

In support of this position, the tenants referenced an excerpt from the third page of the November Notice which states:

Your landlord must have all permits and approvals required by law before they give you this notice. Permits and approvals required by law can include demolition, building or electrical permits issued by a municipality or provincial authority[...]

They argued that “all permits and approvals required by law” included the permits required to build the new house after the rental unit is demolished.

The landlord testified that he has applied for a building permit, and submitted a receipt dated September 26, 2022 from the municipality in support of this. He stated that the municipality would not issue a building permit until after the rental unit was demolished.

## **Analysis**

Section 49(6) of the Act states:

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

49(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;

Residential Tenancy Branch (the “**RTB**”) Policy Guideline 2B addresses this section. It states:

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.

[...]

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the [*Manufactured Home Park Tenancy Act*] if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

Based on the evidence presented at the hearing, I find that as of September 26, 2022, the landlord had not obtained the Demolition Permit and had applied for, but not yet obtained, a building permit.

As such, I find that the September Notice is invalid, as the landlord was not in possession of any permits at the time he issued it. I order the September Notice cancelled and of no effect.

At the time the landlord issued the November notice, he had obtained the Demolition Permit. This permit is the only permit that is required for the landlord to undertake the work specified on the November Notice, namely the demolition of the rental unit. The landlord does not require a building permit to undertake the rental unit's demolition.

This is supported by Policy Guideline 2B, which does not require a landlord to show they have “every permit or approval required for the full scope of the proposed work or change”. Landlord only needs permits to cover the work that requires vacancy of the rental unit. In this case, I find that in order to demolish the rental unit, the landlord requires it to be vacant.

Accordingly, I find that the November Notice is valid. I dismiss the tenants' application to cancel it without leave to reapply.

Section 55(1) of the Act states:

**Order of possession for the landlord**

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed thought November notice and find that it meets with all the form and content requirements under section 52 of the Act, except for a section 52(c), which states:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must [...]

- (c) state the effective date of the notice,

Section 49(2) of the Act sets out when a notice to end tenancy issued under section 49(6) can be made effective. It states:

- (b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
  - (i) not earlier than 4 months after the date the tenant receives the notice,
  - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
  - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The tenants' rent is payable on the 15<sup>th</sup> day of each month. As such, the effective date of the November Notice must fall on the 14<sup>th</sup> day of the month (the day before rent is payable). The earliest valid effective date the November Notice could have is April 14, 2023, not March 31, 2023. Section 53 of the Act operates to automatically change an incorrect effective date to the earliest correct effective date. As such, the November Notice is automatically corrected to have April 14, 2023 as its effective date, and not March 31, 2023.

As I have dismissed the tenants' application to cancel the November Notice, and as I have found the (now corrected) November Notice complies with the form and content

requirements set out in section 52 of the Act, I must issue the landlord an order of possession for the corrected effective date of the November Notice, April 14, 2023.

As the landlord has been substantially successful in this application, I decline to order that he reimburse the tenants the filing fee.

### **Conclusion**

I dismiss the tenants' application to cancel the November Notice and to recover the filing fee.

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by April 14, 2023 at 1:00 pm.

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: February 2, 2023

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Residential Tenancy Branch