



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding PRIMEX FUND (2) GP LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL 4M

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on March 10, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 4-Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion (the Notice).

Both parties were present at the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Tenants confirmed receipt of the Landlord's evidence, and the Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding. No service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

- Are the Tenants entitled to have the landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenants acknowledge receipt of the Notice on or around October 28, 2022. A copy of the Notice was provided into evidence, which shows the Landlord selected the following ground for ending the tenancy:

I am ending your tenancy because I am going to: (check a box that applies)	
<input checked="" type="checkbox"/>	Demolish the rental unit.
<input type="checkbox"/>	Convert the residential property to strata lots under the Strata Property Act.
<input type="checkbox"/>	Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act.
<input type="checkbox"/>	Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.
<input type="checkbox"/>	Convert the rental unit to a non-residential use.
<input checked="" type="checkbox"/>	I have obtained all permits and approvals required by law to do this work. Please complete the information below.

Under this, the Landlord specified that they have a demolition permit, issued October 27, 2022 from the City of Surrey. The Landlord provided copies of the demolition permits, along with a variety of other documents supporting that they plan on demolishing this rental building, completely, and redeveloping the area into over 400 new rental units. The Landlord stated that these Tenants are the last occupants in the building, and are costing the Landlord many thousands of dollars by delaying their move-out.

The Tenants do not feel the Landlord has done enough to help them find suitable alternative accommodation or to compensate them financially. The Tenants spoke to some of the requirements the City of Surrey has for compensating Tenants in this type of situation.

The Landlord stated that they initially offered much more to the Tenants to facilitate their move, but now that they have delayed the proceedings, the Landlord is only willing to pay the minimum amount due under the Act and as per Surrey guidelines.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to perform the stated purpose on the Notice.

I find the tenants were duly served with the Notice on October 28, 2022. The Notice was served pursuant to section 49(6)(a) of the Act which reads:

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]
- 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 Policy Guideline # 2 - Ending a Tenancy: Landlord's Use of Property, states as follows:

*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 can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.*

[...]

*Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.*

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:*

- *a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));*
- *a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*
- *a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).*

I note the Landlord has provided many documents showing they are redeveloping the rental unit and surrounding areas. I note the Landlord obtained the demolition permit from the local government, a copy of which was provided into evidence, on October 27, 2022. The Landlord issued the Notice the following day, and I am satisfied it was done in good faith, given all the supporting documentation, and that they intend to demolish the building as part of their redevelopment plans. The Landlord is legally entitled to do this, and I find the Landlord has sufficiently demonstrated their good faith intentions with respect to this Notice.

I dismiss the Tenant's application to cancel the Notice. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, effective 2 days after service.

As the Tenants were not successful with the application, I dismiss the claim to recover the cost of the filing fee.

### Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenant. If the Tenant fails to comply with

this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: March 10, 2023

---

Residential Tenancy Branch