



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding NORANDA HOLDINGS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

On February 17, 2023, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlords and Tenant attended the hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process.

### Preliminary and Procedural Matters

The Landlord provided 19 pages of documents to the RTB in support of their application and testified that they served the Tenant with their documentary evidence. Eleven pages of the Landlords’ evidence is related to a Safety BC documents regarding the rental property. The Tenant replied that she received 6 pages of a Safety BC report.

After further discussion it became apparent that the Tenant had entirely different documents than what the Landlord has provided to the Residential Tenancy Branch. The Landlords’ documentary evidence is excluded because the Tenant was not served with the documents and did not have an opportunity to consider or respond to the contents of the documents.

The Tenant did not provide any documentary evidence to the RTB.

## Background

The Landlords and Tenant testified that the tenancy began on September 1, 2021, and is on a month-to-month basis. The parties testified that rent in the amount of \$1,400.00 is due to be paid to the Landlord by the first day of each month. The residential property is a four-plex. The Landlord own the entire fourplex. Two of the rental units are vacant.

On February 17, 2023, the Landlord applied for an early end of tenancy. The Landlords stated that they do not want to end the tenancy; however the suggest that the residential property is not livable due to electrical issues that require repair and upgrades. They stated that they were ordered to end the tenancy.

The Landlord was asked whether they received a written order from the city stating that the rental unit was unsafe and the tenancy must be ended. The Landlord stated yes; however, when they were asked to provide the date of the letter they were unable to provide the date.

The Landlord was asked why they did not apply for a hearing before an Arbitrator seeking authorization to end the tenancy with four months' notice based on repairs that require vacant possession of the rental unit?. The Landlord stated that a technical safety person told them to apply for an early end of tenancy.

The Landlord was asked why the tenancy could not continue while the they performed the repairs/ upgrades. The Landlord replied that all the drywall needs to be removed and electrical boxes upgraded to code requirements. The Landlord stated that a partition wall joining the units would have to come down.

In reply, the Tenant stated that a safety authority person attended her unit on November 22, 2022, and mentioned safety concerns. She stated that a safety person found that the hydro for the laundry room was drawing from one of the rental units.

The Tenant is in agreement that the rental unit needs repairs and upgrades; however, she is not in agreement that the tenancy needs to end. She stated that the report she received from the safety person makes no mention that the Landlord needs to evict the Tenants. She stated that the Landlord could repair the two empty units, then permit her to move temporarily while the other units are repaired/ upgraded.

The Tenant stated that she offered to remove herself from the unit on a temporary basis. She stated that the Landlords have not maintained the residential property.

The Landlord stated that he is losing \$5,000.00 per month, but did not provide further explanation.

### Analysis

Section 56.1(2) of the Act provides that if the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and specifying the effective date of the order of possession.

Residential Tenancy Branch Policy Guideline #34 Frustration provides the following information:

*A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.*

*The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.*

Based on the testimony of the parties I make the following findings:

An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy or applying for an order which gives the Tenant the right to dispute a notice to end tenancy by applying for dispute resolution.

I find that the Landlord provided insufficient evidence to establish that the rental unit is uninhabitable, or that the tenancy agreement is otherwise frustrated.

If the Landlord requires the rental unit to be vacant to perform repairs, the Landlord is required to apply for a hearing before an arbitrator that vacant possession is necessary for repairs to the rental unit.

The Landlords' application for an early end of tenancy and an order of possession for the rental unit is dismissed.

The tenancy will continue until ended in accordance with the Act.

### Conclusion

I find that the Landlord provided insufficient evidence to establish that the rental unit is uninhabitable, or that the tenancy agreement is otherwise frustrated.

If the Landlord requires the rental unit to be vacant to perform repairs, the Landlord is required to apply for a hearing and provide sufficient evidence that vacant possession is necessary in order to get authorization to end the tenancy with four months' notice to the Tenant.

The Landlords' application for an early end of tenancy and an order of possession for the rental unit is dismissed.

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 22, 2023

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Residential Tenancy Branch