



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

On February 17, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated January 18, 2023.

The matter was scheduled as a teleconference hearing. The Landlord’s lawyer and the Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. The Tenant provided affirmed testimony and the parties were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

The Landlord’s lawyer stated that they received a copy of the Tenant’s documentary evidence. 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.

### Issue to be Decided.

- Is the Landlord entitled to end the tenancy based on the issuance of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated January 18, 2023 (“the Four Month Notice”).
- Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

The Tenant and Landlord's counsel agreed that the tenancy began on October 13, 2013, and is on a month-to-month basis. Rent in the amount of \$702.94 is to be paid to the Landlord by the first day of each month.

The Landlord issued the Tenant the Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit dated January 18, 2023 ("the Four Month Notice"). The effective date of the Four Month notice is May 31, 2023. The Four Month Notice provides the following reason for ending the tenancy:

*Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.*

The Four Month Notice provides that the City does not require a permit or approval to do the work. The Landlord's lawyer referred to an email from the City in the Tenant's evidence dated January 17, 2023. The email indicates that a permit for unit #201 is not required.

The Four Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person.

The Tenant stated that he received the Four Month Notice on January 18, 2023. The RTB case management system indicates that he disputed the Four Month Notice on February 12, 2023, within the required 30 day time period.

The Landlord's lawyer made the following submissions:

- The Landlord is 74 years old and has health problems and can no longer take care of the residential property. The Landlord is hiring a caretaker of the residential property and is converting the rental unit for the use of the caretaker.
- In a previous hearing between the parties the Landlords notice to end tenancy was cancelled because the Landlord did not provide evidence of whether or not a permit was required.
- The Landlord inquired with the City and was informed that a permit is not required to convert the rental unit for use by a caretaker.

- The Landlord has a right under the Act to issue the notice to end tenancy and the Landlord has issued a proper notice to end tenancy.
- The Landlord has a right to determine which of the four rental units is best for their purposes for use by a caretaker.

In reply, the Tenant stated that this is the third notice to end tenancy he has received from the Landlord. He stated that the first notice to end tenancy was on an outdated form; and the second notice to end tenancy was cancelled because the Landlord did not have evidence of whether a permit is required.

The Tenant stated that the Landlord is not acting in good faith for the following reasons:

- The landlord previously issued two notices to end tenancy.
- The Landlord lied about the character of the rental units to the Arbitrator in the last hearing.
- There may be other guidelines unknown to the Tenant that the Landlord needs to adhere to.
- In the past, the Landlord twice attempted to raise his rent improperly.
- The Landlord's intention is to evict him and then raise the rent for the rental unit.

The Tenant stated that his rental unit is approximately 600 square feet and is identical to the unit beside him. He stated that his suite is actually a bachelor suite because it has no window in the bedroom. He stated that his unit is not unique as he believes it is the same as other units. He stated that he has not been inside all of the other units.

The Tenant testified that he does not deny that the Landlord needs a caretaker; for the residential property; however, he submits that it should not necessarily be his unit that is converted.

The Tenant stated that he had a good relationship with the Landlord and would often help out by shoveling snow, repairing a fence and cleaning gutters. He stated that he is qualified and capable of being the caretaker. The Tenant provided a reference letter from his employer.

In reply, the Landlord's lawyer stated that the Landlord disagrees that they have lied or done something untoward. He submits that the Landlords were describing the other rental units located on the residential property. The previous notices to end tenancy

that were issued had mistakes in them. He submitted that the Landlord has determined that the Tenants unit is best for conversion and their needs.

Legal counsel stated that the Landlord has received responses/ applications to their search for a caretaker and that the Tenant is free to apply for the position.

With regard to the Landlord complying with the Act, the Tenant stated that he does not want to receive any more notices to end tenancy from the Landlord.

### Analysis

Section 49(6) of the Act provides that 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I make the following finding:

With regard to the Tenants concern about receiving notices to end tenancy from the Landlord. The Act permits a Landlord to end a tenancy by issuing a notice to end tenancy to a Tenant. The Act permits a Tenant to dispute a notice to end tenancy that is received from a Landlord. I do not have the authority to restrict or suspend the Landlord's right under the Act to issue a notice to end tenancy to a Tenant.

I find that the Landlord was informed by the City on January 17, 2023, that a permit is not required to convert the rental unit. The Landlord served the Four Month Notice to the Tenant on January 18, 2023 after being informed by the City that a permit was not required.

With regard to the Tenant's submission that the Landlord lied at an earlier hearing, I reviewed the Arbitrator's Decision provided by the Tenant and I note that the Arbitrator made no finding that the Landlord was untruthful. I note that in that Decision the Landlord submitted that the other units were bachelor suites and a two bedroom suite and not as fitting for use by a caretaker.

I assign very little weight to the Tenant's suggestion that the Landlords lied. The Tenant's position that he has a bachelor suite due to the absence of a window may be

different from the opinion of the Landlord. I also note that the Tenant stated that he had not entered all the other units to observe their layout.

With regard to the Landlord previously serving the Tenant with two other notices to end tenancy, I do not agree that this is evidence to show that the Landlord is not acting in good faith. The Landlords are elderly and I find that their use of an old outdated form and their failure to provide evidence of whether or not a permit is required is more in line with simple mistakes rather than intentionally doing something untoward, or not acting in good faith.

With regard to the Tenant's submission that he was not asked to be the caretaker, I find that there is no obligation under the Act for the Landlords to offer or hire the Tenant for the position of caretaker. The Landlord's lawyer stated that the Tenant is free to apply for the position.

With regard to improper rent increases, I have considered the Tenant's documentary evidence. I accept the Tenants evidence that effective August 1, 2019, the Landlord increased the Tenants rent by \$8.75 per month more than permitted by the legislation. The Tenant accepted the rent increase and did not dispute the increase at that time. A Tenant may voluntarily agree to a rent increase greater than the maximum amount. Such agreements must be in writing.

The Tenant received another rent increase effective August 1, 2020. I accept the Tenant's evidence that the Landlord attempted to increase the Tenant's rent by \$7.45 per month more than permitted by the legislation. The Tenant did not pay the illegal amount. He provided the Landlord with information on the rules pertaining to rent increases and he only paid the allowable rent increase amount of \$17.55 per month for a new monthly rent amount of \$692.55 at that time.

There was no testimony from the Tenant that the Landlord became angry with the Tenant when they were informed about the improper Notice of Rent Increase for August 2020. There was no suggestion that the Landlord made threats to evict the Tenant out of retribution for not accepting the incorrect rent increase. I find that the Tenant accepted one improper rent increase and informally disputed the other.

I am not persuaded that the Landlord's decision to convert the Tenant's rental unit for use of a caretaker is based on retribution related to a dispute of a rent increase from over 2.5 years ago.

I have considered the Tenant's suggestion that the Landlords are converting his suite and ending his tenancy because they intend to raise the rent for the rental unit. I find that it is within the Landlords right to determine which rental unit is best for converting into a caretakers unit. The Landlord's decision may include consideration as to the layout of the rental units and may also be based on the amount of rent they are receiving from each unit. There is nothing in the Act that requires the Landlord to base their decision on the amount of rent they are receiving from a unit or how long a Tenant has lived there. I find that the Tenant's suggestion that the Landlord's true motivation is to raise the rent for the unit is conjecture. The Tenant agrees that the the Landlord needs a caretaker for the residential property; however, he just does not want it to be his unit.

The Tenant's application to cancel the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated January 18, 2023 is dismissed.

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.

The Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property dated January 18, 2023 is upheld. I find that the Four Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the Four Month Notice.

I grant the Landlord an order of possession effective May 31, 2023, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not successful with his application, I decline to order the Landlord to repay the \$100.00 fee for the application.

### Conclusion

The Tenant's dispute of a Four Month Notice To End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit dated January 18, 2023, is not successful.

The tenancy is ending. I grant the Landlord an order of possession for the rental unit effective May 31, 2023, after service on the Tenant.

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