



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

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

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 4 Month Notice to End Tenancy for Demolition of a Rental Unit pursuant to section 49;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and the tenant JY attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package. The tenant did not receive the landlord’s evidence and the landlord testified that he did not serve the tenant with it. The landlord’s documentary evidence was excluded from consideration in this decision as it was not exchanged with the tenant in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure.

### Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Should the landlord be ordered to comply with the Act?

Can the tenant recover the filing fee?

### Background and Evidence

The parties agree on the following facts. The tenancy began on March 14, 2013 and rent is currently set at \$2,150.00 per month. The landlord is holding the tenant’s security deposit of \$1,000.00.

The landlord personally served the tenant with the 4 month notice to end tenancy (notice) on November 7, 2022 and she filed an application to dispute the notice to end

tenancy on December 5, 2022, within the 30 days required under section 49(8)(b) of the Act.

Neither party provided a copy of the notice, but the tenant testified that it had all the required provisions of form and content as required under section 52 of the Act. The tenant testified that the reason for ending the tenancy was because the landlord is going to demolish the rental unit. The landlord did not put a check mark in the spot where it states, *"I have obtained all permits and approvals required by law to do this work. Please complete the information below"*. The landlord did not fill in anything in the space where he was required to provide information about the permits and approvals.

Where it says "the work I am planning to do is detailed in the table below", the tenant testified the notice indicates:

Planned work: demolition of house.

Details of work: Application for demolition of house and requiring demolition permits will be done at the city of [withheld for privacy]. The tenants will be provided with one full months free of charge of lease costs.

Previous notice of tenant termination other than this one is no more valid.

The tenant argues that the landlord did not have the permits and approvals in place before serving her with the notice to end tenancy under section 49(6). Further, she argues that this is the second notice to end tenancy served upon her and that it borders on harassment.

The landlord testified that the city would not provide him with a demolition permit until the electricity power, and gas are shut off. The city requires the property to be empty or vacant of residents for safety reasons. Once the tenants are gone, the city can shut off the utilities and then they will issue the permit.

When I asked the landlord whether the city put that stipulation into writing, the landlord responded that the city sent an email to his contractor on February 2, 2023.

### Analysis

The tenant was served with the landlord's notice to end tenancy issued under section 49(6) of the Act on November 7, 2022 and filed her application to dispute it within 30 days, on December 5<sup>th</sup> in accordance with section 49(8)(b) of the Act.

When a tenant files an application to dispute a landlord's notice to end tenancy, the onus is on the landlord to prove the validity of the reasons for ending the tenancy pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

The tenant argues that the landlord did not have the permits and approvals required by law to demolish the rental unit. This issue is explored in Residential Tenancy Branch Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, reproduced below:

#### **B. PERMITS AND APPROVALS REQUIRED BY LAW**

"Permits and approvals required by law" can include:

- demolition, building or electrical permits issued by a municipal or provincial authority;
- a change in zoning required by a municipality to convert the rental unit to a non-residential use; or
- a permit or license required to use it for a new purpose.

...

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 give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

...

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. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

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 MHPTA 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.

**If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.**

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

The landlord testified that the city would not issue a permit until the house was vacant, however the landlord did not provide any evidence to corroborate this statement and no copy of the policy or procedure establishing that condition was provided. Moreover, the landlord did not provide me with sufficient evidence to establish that he has completed all the steps needed to obtain the permits prior to issuing the notice to end tenancy.

Consequently, I find that the landlord did not have all necessary permits and approvals that are required by law before serving the 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use upon the tenant and I cancel it.

The tenant also sought an order that the landlord comply with the Act, regulations or tenancy agreement in her application. The application states:

*Landlord must act in good faith -This is the second eviction I have received this year this year. The first eviction I received in July of 2022 was so the landlords daughter could move in. The landlord later admitted his daughter never intended to move in, and was in fact horrified at the idea. -This has become harassment. The latest eviction was served by mail and in person by [the landlord], while his daughter waved and filmed the encounter while sitting in the car in the driveway.*

The tenant did not describe what section of the Act, regulations or tenancy agreement the landlord was not complying with in her application. As such, I cannot determine what order the tenant seeks. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, the tenant may withhold \$100.00 of a single payment of rent due to the landlord.

Conclusion

The notice to end tenancy is cancelled and of no further force or effect. This tenancy shall continue 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: April 14, 2023

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Residential Tenancy Branch