



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **CNL-4M, 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; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. The tenant was represented by counsel, DV.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

### Preliminary Issue

The landlord acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings package, however the tenant did not recall receiving the landlord's evidence package. If he was served with evidence, the tenant said he would have sent it to his lawyer. The landlord testified that he posted a copy of his evidence to the tenant's door on February 14, 2023 and took a photograph of it. A copy was not sent to the tenant's counsel as the tenant's application for dispute did not have any contact information for the tenant's counsel on it. On a balance of probabilities, I accept that the landlord served the tenant with his evidence package and I deem it served on February

17, 2023, the third day after it was posted to his door in accordance with sections 88 and 90 of the Act. Both the tenant's and the landlord's documentary evidence would be considered in this decision.

#### Issue(s) to be Decided

Should the landlord's 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use be upheld or cancelled?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord testified that he and the tenant have been friends since they were both ten years old. The tenancy began on September 1, 2018 with rent set at \$1,750.00 per month. The rental unit is an unauthorized suite located in a single family home.

The landlord was served with a notice from the city regarding the unauthorized unit. On October 26, 2021, the landlord was provided with a notice that the premises must be brought back into compliance with city bylaws. In this notice, the landlord is instructed to obtain a **building permit**, to engage a licensed plumbing contractor to obtain a **plumbing permit** and inspections; engage a licensed gas contractor to obtain a **gas permits** and inspections; and engage a licensed electrical contractor to obtain an **electrical permit** and inspection. It goes on to say that a compliance schedule for the completion of the building, plumbing and electrical permits will be set upon issuance of the building permit.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause under section 47(1)(k), as the "rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority". This notice was cancelled by an arbitrator at a hearing on October 25, 2022, and the dispute number is recorded on the cover page of this decision. In the decision, the arbitrator cancelled the

notice to end tenancy as he found that the city had not issued an “order” but rather a forceful letter seeking compliance.

On December 5, 2023, the landlord obtained a building permit from the municipality and served the tenant with a 4 Month Notice to End Tenancy for Demolition or Conversion to Another Use (the “Notice”) the next day. The landlord obtained a Gas permit and a Plumbing permit on January 17, 2023, and never obtained an electrical permit.

A copy of the Notice was provided as evidence. On the Notice, the landlord does not specify, with an appropriate “tick”, the reason for ending the tenancy. The landlord only notes that he has obtained all permits and approvals required by law to do this work. On the Notice, the landlord provides the permit number for the building permit, but not the gas permit or the plumbing permit as they weren’t obtained until January 17, 2023.

The tenant submits that the landlord is trying to convert the unit to a non-residential use and did not check off one of the boxes on the form, thus making the form defective. Further, counsel argues that the legal doctrine of “action estoppel” prevents the landlord from relitigating the end of the tenancy again with the tenant, since the issue of evicting the tenant based upon the conversion of the suite was already considered by an arbitrator. Counsel also provided news releases indicating the current government is trying to legalize illegal suites to increase housing stock in the province.

### Analysis

The tenant acknowledges being served with the landlord’s Notice on December 6, 2022 when it was posted to his door. He filed his application to dispute the Notice within the required 30 days, on January 4, 2023 in accordance with section 49(b) of the Act.

Section 49(6) states 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 do any of the following:

- (a)demolish the rental unit;
- (b)[Repealed 2021-1-13.]
- (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.

Section 49(7) states that a notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 52 reads as follows:

**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
- (a)be signed and dated by the landlord or tenant giving the notice,
  - (b)give the address of the rental unit,
  - (c)state the effective date of the notice,
  - (d)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e)when given by a landlord, be in the approved form.

I have reviewed the landlord's notice to end tenancy issued under section 49(6) and I note that the landlord failed to provide the grounds for ending the tenancy. The reason for ending the tenancy was left unticked on the form. This error is contrary to section 52(d). While tenant's counsel understood that the reason was so that the landlord could convert the rental unit to a non-residential use; the landlord is still obligated specify that reason on the notice to end tenancy in order for the Notice to be effective.

Further, the landlord notes on the Notice that he has obtained all permits and approvals required by law to do this work. During the hearing, the landlord acknowledged that on December 6<sup>th</sup>, the day he served the tenant with the notice to end tenancy, the plumbing and gas permits had not yet been obtained. Both of those were issued on January 17, 2023, and the landlord never obtained an electrical permit. In the letter from the city on October 26, 2021, the landlord was directed to obtain each of those permits after obtaining the building permit. Based on these facts, I find that the landlord was premature in issuing the Notice under section 49(6) since he did not have all the permits required by law to do the work.

As the landlord's notice to end tenancy was issued prematurely and because the landlord failed to provide a reason for ending the tenancy, I find that the Notice does not comply with the form and content provisions as set out in section 52 of the Act. Consequently, the notice to end tenancy served pursuant to section 49(6) is cancelled and is of no further force or effect.

As the tenant's application was successful, the tenant is entitled to recover the filing fee. In accordance with the offsetting provision of section 72, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

Tenant's counsel argued that the landlord is barred by "action estoppel" from serving the tenant with this notice to end tenancy, stating that the conversion of the suite was previously determined. I disagree with this argument. The issue before the first arbitrator was whether the landlord had cause to end the tenancy under section 47(1)(k) based on an order from the municipal authority. The issue before me is whether the landlord had all the permits required by law to convert the unit to a non-residential use under section 49(6)(f) and whether the notice to end tenancy met the form and content provisions required under the Act, section 49(7). As the issues are distinct, the landlord was entitled to serve the tenant with this notice to end tenancy under section 49. The landlord is not barred from serving another Notice to the tenant under section 49(6)(f) if the requisite permits are obtained.

### Conclusion

The notice to end tenancy is cancelled and of no further force or effect.

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: May 02, 2023

---

Residential Tenancy Branch