DECISION

Introduction

This hearing dealt with the Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Four Month Notice to End Tenancy Issued for Demolition, or Conversion of Rental Unit to Another Use (Four Month Notice) under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant A.K. and Tenant R.B. attended the hearing for the Tenants.

The Landlord's agent attended the hearing for the Landlord.

Preliminary and Procedural Matters

This proceeding was held over two dates. As seen in the Interim Decision I issued on October 14, 2025, the proceeding had been re-scheduled to deal with a third Tenant's Application for Dispute Resolution to dispute a Four Month Notice. That third Tenant and the Landlord agreed to withdrawal of that application. I have un-joined that application from the two applications that remain unresolved and I have recorded it as being withdrawn. The names of the Tenants who withdrew their application are removed from the style of cause of this decision.

I had confirmed service of hearing materials between the Landlord and Tenant A.K. at the original hearing held on October 14, 2025. At the reconvened hearing of October 24, 2025, I confirmed that Tenant R.B. did not serve his proceeding package to the Landlord but he did serve the Landlord with a two page written submission. The Landlord stated that she contacted the Residential Tenancy Branch and obtained a copy of the hearing notice for Tenant R.B.'s dispute, and the Landlord understands Tenant R.B. is disputing the Four Month Notice. The Landlord was agreeable to being deemed sufficiently served with Tenant R.B.'s application. Under section 71 of the Act, I deem the Landlord sufficiently served with Tenant R.B.'s Application for Dispute Resolution. The materials of all parties are admitted and considered in making this decision.

As seen in the Interim Decision, the Landlord was authorized to serve the Tenants with a re-numbered and re-ordered evidence package so that the Tenants have packages

that are ordered and numbered in the same way for ease of reference and efficiency. The Landlord did serve such packages to the Tenants during the period of adjournment; however, the Tenants informed me at the reconvened hearing that they wished to refer to the original evidence packages they were served. As such, the Landlord's agent was instructed to refer to the original evidence packages served to the Tenants.

Issues to be Determined

1. Should the Four Month Notices be upheld or cancelled? If upheld, is the Landlord entitled to Order of Possession?
2. Are the Tenants entitled to recover the filing fee they paid for their applications from the Landlord?

Background and Evidence

The tenancy for Tenant A.K. started on May 1, 2018. The tenancy is currently in month-to-month status. Tenant A.K. is currently required to pay rent of $827.76 on the first day of every month. Tenant A.K.'s rental unit is described as a bachelor style suite.

The tenancy for Tenant R.B. started on April 1, 2021. The tenancy is currently in month-to-month status. Tenant R.B. is currently required to pay rent of $1,027.94 on the first day of every month. Tenant R.B.'s rental unit is described as a one-bedroom suite.

The rental units occupied by Tenant A.K. and Tenant R.B. are located on a 50 acre parcel of property owned by the Landlord. A vineyard and winery operate on the property. There are multiple buildings on the property including the building referred to as the "Barn" where three residential rental units are located, including the two units that are the subject of this dispute.

On August 25, 2025 the Landlord issued the subject Four Month Notices and sent them to the Tenants via email. The Four Month Notices were also attached to the tenant's rental unit doors on August 26, 2025.

The Four Month Notices have stated effective dates of January 31, 2026 and indicate the reason for ending the tenancy is because the Landlord is going to convert the rental units to non-residential use which is described as being "Use of building for business purposes in relation to the Winery and Vineyard on site." The Four Month Notices indicate that no permits or approvals are required by law to do this work.

The Landlord submitted that on August 12, 2025 the Landlord and a third party corporation executed a commercial lease agreement ("the commercial lease agreement"), set to commence on October 1, 2025, for the leasing of the property except for the buildings that are occupied by residential tenants.

A Memorandum of Understanding dated August 15, 2025 ("the Memorandum"), was executed by the Landlord and the third party, which provides that that as the residential tenants on the property vacate the buildings and the buildings become available for commercial lease, the buildings will be incorporated into the commercial lease agreement. The Memorandum also provides that "the Landlord agreed to use permitted legislative actions in order to have the buildings vacated and available to the third party in due course".

The Landlord explained that the subject Four Month Notices were issued before the commercial lease became effective on October 1, 2025, because the commercial lease and the Memorandum of Understanding were signed on August 12, 2025 and August 15, 2025 respectively.

In addition to the commercial lease agreement commencing on October 1, 2025, the vineyard and winery equipment was sold to the third party on October 1, 2025.

The Landlord submitted that once the residential tenants vacate their respective rental units, the Landlord will turn over the vacant building(s) to the third party and the third party is permitted to use the rental units in accordance with the commercial lease agreement which permits: vineyard growing and processing, winemaking, retail sales, storage and vineyard/winery related operations.

The Landlord submitted that the third party intends to use the rental units for storage and support for its wine tasting operations on the property and there will be no need to de-construct or alter the structure of the rental units. Also, the current use of the Barn for residential living accommodation is non-compliant with the municipal bylaws and returning its use non-residential will bring the use of the building back into compliance.

The Landlord explained that if the third party does not use the rental units for commercial activities and the Tenants were to succeed in making a claim against the Landlord for compensation under section 51(2) of the Act, the Landlord and the third party have an indemnification agreement in place. Therefore, the Landlord submits, the third party is financially motivated to ensure the rental units are converted to non-residential use.

The Tenants are of the position that changing a building's use and occupancy requires a building permit even if the Landlord was remiss in obtaining a building permit when the rental units were created and even if the rental units will not be physically altered after their tenancies end. Building permits have not been obtained to change the use and occupancy of their rental units to commercial use.

The Tenants question the feasibility of using their rental units for wine storage given the limited sizes of their doors and less than ideal climate control systems that are needed for wine storage.

The Tenants question the use of section 49(6) of the Act to issue the Four Month Notices to them based on what a third party intends to do with their units.

Analysis

Should the Four Month Notices be upheld or cancelled?

A tenant in receipt of a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit has 30 days after receiving the notice to file an Application for Dispute Resolution to dispute the notice. The Landlord issued the Four Month Notices and served them on August 25, 2025 and August 26, 2025. Tenant A.K. filed to dispute the Four Month Notice on September 5, 2025 and Tenant R.B. filed to dispute the Four Month Notice on September 12, 2025. Accordingly, I am satisfied the Tenants filed to dispute the Four Month Notices within the time limit for doing so.

Where a Landlord's notice to end tenancy comes under dispute, the Landlord bears the burden to prove that a valid notice was issued in the approved form, and the tenancy should end for the reason stated on the notice.

The stated reason on the Four Month Notices before me is provided under section 49(6)(f) of the Act. Section 49(6)(f) provides that:

> (6) 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:
>
> …
>
> (f) **convert** the rental unit to a non-residential use.
>
> [My emphasis underlined an in bold]

Residential Tenancy Policy Guideline 2B provides information and policy statements with respect to ending a tenancy under section 49(6)(f) of the Act. The policy guideline states, in section J.:

> **J. Converting to a Non-Residential Use**
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> Non-residential use means something other than use as living accommodation. However, sometimes use as a living accommodation is secondary, incidental or consequential to a non-residential use. For example, correctional institutions are facilities that incarcerate persons convicted of criminal offences – a non-residential use – but they also provide living accommodation to incarcerated persons. Similarly, community care facilities provide 24-hour institutional care to persons and, in doing so, must also provide living accommodation to those

> persons. These facilities are considered non-residential even though they provide living accommodation because this use is consequential to their primary institutional use.
>
> Non-residential use does not include use as short-term living accommodation. For example, a Landlord cannot end a tenancy for non-residential use, to convert the rental unit to vacation or travel accommodation. Conversion of a rental unit to vacation or travel accommodation is considered a residential use, since the purpose would be to provide temporary living accommodation to a person.
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> Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office. Some live/work spaces may also be considered non-residential if the majority of the unit must be devoted to commercial enterprise based on municipal requirements: *Gardiner v. 857 Beatty Street Project, 2008 BCCA 82*. **Holding the rental unit in vacant possession is the absence of any use at all. A Landlord cannot end a tenancy for non-residential use to leave the rental unit vacant and unused**.
>
> [My emphasis underlined and in bold]

Based on the wording of section 49(6)(f), it is the Landlord that must intend to convert the rental unit to a non-residential use and have already obtained the applicable permits and approval required by law in order to end the tenancy.

Based on the commercial lease agreement and the Memorandum, and the oral submissions before me, I find the Landlord is seeking to regain vacant possession of the rental units from the Tenants and then turn over vacant building(s) to a third party under a commercial lease agreement and it is the third party who intends to use the buildings commercially. I am of the view the Landlord is not converting the use of the rental units to commercial use. The Landlord intends to hold the rental units in vacant possession, even if for a very short amount of time, and as indicated in the Policy Guideline 2B, vacant use is the absence of any use at all. Therefore, I am unsatisfied the Landlord intends to use the rental units for non-residential use.

The Landlord recognized that there is a risk that the third party may not convert the rental units to a non-residential use, which would entitle the Tenants to compensation under section 51(2) of the Act, in pointing to the indemnification agreement with the third party and submitted that the third party is motivated to convert to non-residential use. This, in my view, further supports my finding that it is the third party who intends to convert the rental units to non-residential use and the Landlord is merely providing the third party with vacant units that have been in use for years as residential living units.

In light of the above, I grant the Tenants' request for cancellation of the Four Month Notices served upon them and their tenancies continue until such time they end in accordance with the Act.

I heard arguments from the parties with respect to the need for permits to change the use and occupancy of the rental units. I also recognize that issuance of the Four Month Notice before the commercial lease agreement came into effect is another issue that may be relevant. However, I find it unnecessary to give those matters further consideration since I have found the Landlord is not the entity that intends to convert the rental units to non-residential use.

Are the Tenants entitled to recover the filing fee from the Landlord?

Given the Tenants success in their respective applications, I award the Tenants recovery of the $100.00 filing fees they paid for their respective applications from the Landlord under section 72 of the Act.

To recover these awards, the Tenants are authorized to make a one-time deduction of $100.00 from a subsequent month's rent payment.

Conclusion

The Tenants' requests for cancellation of the Fourt Month Notices dated August 25, 2025 are granted and the tenancies continue at this time.

Each of the Tenants is authorized to make a one-time deduction of $100.00 from a subsequent month's rent payment to recover the filing fee they paid for their respective applications from the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 28, 2025

Residential Tenancy Branch