



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL-4M, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for demolition, renovation or conversion of the rental unit to another use, and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude on the first scheduled date and was adjourned to continue. My Interim Decision was provided to the parties.

The landlord and the property owner attended the hearing on both scheduled dates, and the property owner gave affirmed testimony. The landlords were also accompanied by another agent of the landlord who did not testify or take part in the hearing.

One of the tenants attended the hearing on both scheduled dates and was accompanied by an Advocate on the second scheduled date. The tenant also gave affirmed testimony.

The parties were given the opportunity to question each other and give submissions. All evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Should the landlords be granted an Order of Possession based on a 4-Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit?

### Background and Evidence

**The property owner** (JG) testified that this fixed-term tenancy began on May 1, 2018 and was to expire on June 30, 2019 but was extended to March 31, 2020. Thereafter it reverted to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent

in the amount of \$4,612.00 is currently payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$2,250.00. A pet damage deposit in the amount of \$2,250.00 was collected from the tenants later in the tenancy, both of which are still held in trust by the landlords. The rental unit is a large single family dwelling on an acreage.

On March 28, 2020 the landlords served the tenants with a 4-Month Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of Rental Unit (hereafter referred to as the Notice) by personally serving one of the tenants. A copy has been provided for this hearing and it is dated March 28, 2020 and contains an effective date of vacancy of July 31, 2020. The reason for issuing it states that the landlord is going to demolish the rental unit.

The landlords have provided an aerial view of the rental property as well as adjacent lots drawn thereon. The entire area is being redeveloped into a sub-division, and the services have to go through the rental property. The drive-way must be demolished as well as services to the house, so there will be no utilities or access.

The owner has been in the business for 35 years and testified that no permit is required. However, once the Notice was served, the tenant said he wanted the permit, so the landlords obtained one and delivered a copy to the tenant on March 30, 2020 along with another Notice. The tenant advised at that time that if he was given a permit, he would move out. However, due to the COVID-19 Pandemic, no notices to end a tenancy could be issued as of March 30, 2020, so the second Notice was void.

Once the driveway and utilities are removed, the rental home will not be livable, and now that the landlords have the demolition permit, they intend to demolish it.

The tenants have not served the landlords with an Application for Dispute Resolution disputing the Notice, and the landlords seek an Order of Possession.

**The tenant** testified that he accepted the Notice so the landlord would leave.

The Notice served on March 28, 2020 is not valid. The landlords have been trying to get the permits, and then ran it over to the tenant on the 31<sup>st</sup> of March. They ran out of time.

Without the permits, the Notice is null and void, and is egregiously lacking. It cannot be determined to be valid because it states that permits had to be in place prior to issuing it.

The parties had been to a previous Dispute Resolution Hearing on June 3, 2020. The landlord had applied to end the tenancy based on a Mutual Agreement to End Tenancy, however the Arbitrator said it was an attempt to circumvent the *Residential Tenancy Act*.

If the tenant thought he had to, he would have disputed the Notice.

### Analysis

The parties have conflicting positions with respect to the validity of the Notice, specifically about whether or not the landlords were required to have permits in place prior to the issuance of the notice. The landlords believe no permits were necessary and got the permit after the tenant asked for one. The tenant believes the lack of permits prior to its issuance invalidate the Notice. Neither party has provided any evidence to support their respective positions.

The *Residential Tenancy Act* states that if a tenant does not dispute a notice to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy.

Whether or not permits are required, the conclusive presumption exists in the legislation. The tenant testified that if he thought he had to dispute the Notice, he would have. However, the contrary is true, that if the tenants thought it was in valid, the tenants ought to have disputed it. The tenants did not dispute the Notice and are presumed to have accepted the end of the tenancy.

I have reviewed the Notice and I find that it is in the approved form, and therefore, I grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on July 31, 2020, the effective date contained in the Notice.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee. I order that the landlords be permitted to keep that amount from the security deposit held in trust.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on July 31, 2020.

I hereby order the landlords to keep \$100.00 of the security deposit held in trust as recovery of the filing fee.

This order is final and binding and may be enforced.

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: July 27, 2020

---

Residential Tenancy Branch