



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M OLC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act), seeking to cancel a 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion of Rental Unit dated February 24, 2021 (4 Month Notice) and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The tenant and the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Given the above, I find the parties were sufficiently in accordance with the Act.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issue to be Decided

- Should the 4 Month Notice be cancelled?

### Background and Evidence

The parties agreed that a month to month tenancy began on April 15, 2012. Monthly rent is \$939.00 per month and is due on the first day of each month.

The tenant confirmed that they received the 4 Month Notice dated February 24, 2021 on February 24, 2021, which is also supported by the information supplied by the tenant in their application. The effective vacancy date on the 4 Month Notice is listed as June 30, 2021. The tenant disputed the 4 Month Notice on March 28, 2021. The filing fee was waived for this application.

The tenant testified that they continue to occupy the rental unit when asked why they waited so long to dispute the 4 Month Notice, the tenant replied “I was debating on filing the application.”

The tenant was advised that they filed their application late and not within the 30-day timeline provided for under section as the 30<sup>th</sup> day fell on March 26, 2021 and the tenant did not file their application until March 28, 2021. The tenant stated they were advised by an Information Officer that documents posted to the door or put in a mail slot were deemed served 3 days later. The tenant was advised that deemed service provisions of the Act do not supersede actual service and in the matter before me, the tenant confirmed twice, both under oath and in their application that they received the 4 Month Notice on February 24, 2021. Therefore, I dismissed their application for the reasons I will now set out below.

I also note that the 4 Month Notice indicated that permit(s) were required for extensive work that was detailed, including changing electrical wire from aluminum to copper, doubling the service panel and adding more kw of power to baseboards and that 3-4 months timeline was provided, in addition to an electrical permit from Technical Service BC.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**4 Month Notice** – Sections 49(8) and 49(9) apply and state:

- (8) **A tenant may dispute**
  - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
  - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.**
- (9) **If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant**
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**
  - (b) must vacate the rental unit by that date.**

[emphasis added]

As a result, I find the tenant waited beyond the 30-day timeline provided for under section 49(8)(b) of the Act provides for and as a result, I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date of the notice, which is June 30, 2021.

I also note that the tenant did not make an application for more time to file an application to dispute the 4 Month Notice. Therefore, **I dismiss** the tenant's application as it was filed late and outside of the timeline provided for under the Act.

Section 55 of the Act applies and states:

#### **Order of possession for the landlord**

- 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and considering that I find the 4 Month Notice complies with section 52 of the Act, I must grant the landlord an order of possession effective **June 30, 2021 at 1:00 p.m.**, which is the effective date on the 4 Month Notice. I also note that the 4 Month Notice indicated that permit(s) were required for extensive work that was detailed, including changing electrical wire from aluminum to copper, doubling the service panel and adding more kw of power to baseboards and that 3-4 months timeline was provided, in addition to an electrical permit from Technical Service BC.

As the tenancy is ending on June 30, 2021, I find it is not necessary to consider the tenant's remainder of their application as it is now moot.

### Conclusion

The tenant's application to cancel the 4 Month Notice is dismissed without leave to reapply as indicated above.

The landlord has been granted an order of possession effective June 30, 2021 at 1:00 p.m.

This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenant may be responsible for all enforcement costs related to the order of possession.

This decision will be emailed to both parties as indicated above.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2021

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Residential Tenancy Branch