



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 was convened in response to 2 applications for Dispute Resolution filed by 2 tenants of the same residential property and the same landlord pursuant to the *Residential Tenancy Act* (the Act), each seeking cancellation of a Four Month Notice to End Tenancy for Landlord's Use of Property (the Notice), and for the landlord to comply with the Act.

The hearing was convened by telephone conference call and was attended by both tenants and the landlord with legal counsel. The parties were provided opportunity to present their evidence orally and in written or documentary form, and to make submissions at the hearing. Neither party raised concerns regarding service of documentary evidence. Each party acknowledged receiving the evidence of the other and having opportunity to review that evidence and able to respond to it.

I have reviewed all evidence and testimony before me meeting the Residential Tenancy Branch Rules of Procedure, and despite the abundance of evidence I refer only to the relevant facts and issues in this Decision. At the end of the hearing both parties acknowledged presenting all of the relevant evidence they wished to present.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that complies with Section 52 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the respective landlord's Notice?

If the Notice is not cancelled, are the Landlord's entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

Both tenants provided testimony although the tenant of unit 4 spoke primarily in this matter. The 2 tenancies each have a payable monthly rent of \$531.00. The landlord owns the entire residential complex which also includes a commercial unit operated by the landlord.

It is undisputed that the landlord personally served each of the 2 tenants with a Four Month Notice on June 15, 2018 pursuant to Section 49(6)(f) of the Act, as they plan to convert the residential property to non-residential use as a "boutique hotel" (hotel). The landlord's Notice states they have obtained all permits and approvals required by law (local government) to do the work and accomplish the stated purpose of the Notice. The tenant claims the landlord does intend in good faith to accomplish the stated purpose of the Notice; that the landlord is not acting in good faith and that permits and approvals of the local government are incomplete, and therefore the landlord's Notice is not valid. The tenant also claims the landlord lacks the financial means to perform the work required toward the stated purpose of the Notice.

The respective Four Month Notice in evidence before me are dated June 15, 2018 with an effective date of October 31, 2018, and state that the reason for ending the tenancies is to convert the rental units to non-residential use following some planned work to repair, renovate and augment to commercial requirements.

All parties acknowledged the stressed nature of the tenancy relationships in this matter and the landlord acknowledged the situation has left them less than satisfied in the role of landlord and therefore they now seek to cater to what they testified is an existing and growing need for vacation or travel accommodations in the City. The tenant argued the landlord's building permit submitted into evidence to accomplish the commercial alterations/repairs lack components from the respective building trades as to the performance of the work. The tenant also argued that the landlord has "no money" to pay for the required work to convert the use of the building.

In support of the Notices in this matter the landlord submitted a Building Permit from the City, issued prior to the date of the Notices to End, and authorizing repairs for

commercial purposes in accordance with the design and plans submitted in support of the permit application. The landlord also submitted a copy of the current City's Zoning Bylaw regulating the use and development of property and in which it indicates that a hotel is a permitted use within the area in which the existing residential property is located. The landlord testified that they have obtained all requirements to accomplish the stated purpose of the Notices insofar as all approvals and permissions. The landlord also submitted evidence that dual addresses for the residential property identified in the Hearing note (style of cause page) are, according to the City, one and the same.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of all evidence submitted I find as follows.

Based on the documentary evidence and testimony before me, I find that the tenants were served with the Four Month Notice on June 15, 2018, and the tenants disputed the Notice within the prescribed time to do so.

Although the tenant has submitted that the landlord's permissions and approvals from the City are incomplete and the landlord does not have the financial means to accomplish their stated purpose, it must be known that an Arbitrator in this type of matter does not have the authority or the means to question or go behind the authorized actions of the City in their process to grant any required permission or development approval. Nor is an Arbitrator effectively able to assess the financial adequacy of a landlord's financial resources to accomplish the stated purpose of the landlord. It must be noted that credit, lending or equity entities are available to individuals. I find the evidence in this matter supports that the City's permission and approval process for the landlord's stated purpose for issuing the Notice to End, to convert the rental units to non-residential use, is being accommodated by the City's process in accordance with their law(s). Therefore, I do not accept the tenant's arguments in these respects. I find that the landlord's reason for now deciding to shift focus from landlord to hotel owner is not sufficient cause supporting they are making this change in bad faith.

Section 49(6) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord intends in good faith to convert the rental unit(s) to non-residential use, provided they have all permits and approvals required by law to do this work.

Although the tenant alleged that the Four Month Notice had been issued for reasons other than those stated in the Notice, they failed to provide meaningful or relevant evidence in support of their allegations. I find the landlord's rationale for converting the focus of the rental units to non-residential use does not sufficiently support indication of a dishonest intention. As a result, I find the landlords' testimony and supporting documentary evidence from the City more persuasive and reliable than the tenant's unsupported allegations. As a result, I find the Landlord has aptly supported their reason for ending the tenancy pursuant to Section 49(6) of the Act and I therefore dismiss the tenant's Application *without leave to reapply*.

Having dismissed the tenant's application, I must now turn my mind to whether the Landlords are entitled to an Order of Possession pursuant to section 55 of the Act. As the Four Month Notice is signed, dated, gives the address for the rental unit, states the appropriate effective date of the Notice and the reason for ending the tenancy, and additionally is in the approved form, I find that it complies with section 52 of the Act.

Based on the above the landlords are therefore entitled to an Order of Possession pursuant to Section 55 of the Act for the effective date of the Notice: October 31, 2018.

Pursuant to Section 51(1) of the Act the landlord should be mindful that the prescribed compensation is provided on or before the effective date of the Four Month Notice otherwise the tenant is at liberty to seek the prescribed compensation from the landlord through the Branch dispute resolution process.

The parties should further be mindful that section 51(2) of the Act states that if the rental unit is not used for the stated purpose for ending the tenancy for at least 6 months, beginning within a reasonable period after the effective date of the notice, the tenant may be entitled to claim from the landlord compensation equivalent to 12 months' rent.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

I grant Orders of Possession to the landlord effective **October 31, 2018**. The landlord is given the Orders in the above terms and must serve them as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding.

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: September 05, 2018

Residential Tenancy Branch