# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNSHINE COAST LIONS HOUSING SOCIETY and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes CNL-4M

Introduction

This proceeding dealt with the tenant's application to cancel a *4 Month Notice to End Tenancy Demolition, Renovation, Repair or Conversion of Rental Unit* ("4 Month Notice"). A participatory hearing was held by teleconference call on January 15, 2019 and both parties appeared or were represented on that date. The hearing time expired before the matter could be fully heard. The hearing was adjourned and final written submissions were authorized and ordered. An Interim Decision was issued and should be read in conjunction with this decision.

I received the landlord's final written submissions on January 22, 2019 which is within the time limit set. I received the tenant's final written submissions on January 28, 2019 which is also within the time limit set. Accordingly, I have considered all of the testimony, evidence and written submissions provided by both parties in making this decision.

Issue(s) to be Decided

Should the *4 Month Notice to End Tenancy Demolition, Renovation, Repair or Conversion of Rental Unit* be upheld or cancelled?

Background and Evidence

The subject tenancy started on January 1, 2003. The tenancy is on a month to month basis. The tenant is currently required to pay monthly rent of $330.00 plus $10.00 for laundry on the first day of every month. The tenant's rent obligation is not subsidized.

The landlord is a housing society that provides affordable housing to seniors and persons with disabilities. The subject rental unit was described as being a small

bachelor style unit within a 15 unit building configured like a motel or row-housing. The property includes the building containing the tenant's unit and another similar style building that contains 14 units, plus the landlord's office, that were constructed in the 1970's and are the two oldest buildings on the property. There are three other buildings that provide housing on the property that were constructed in later years, including one building that was constructed in 2012 after funding was provided by the province.

On October 31, 2018 the landlord posted the subject *4 Month Notice to End Tenancy Demolition, Renovation, Repair or Conversion of Rental Unit* ("4 Month Notice") on the tenant's door. The tenant received the 4 Month Notice the same day. The 4 Month Notice has a stated effective date of March 1, 2019 and indicates the reason for ending the tenancy is because the landlord is going to demolish the rental unit. In the space provided on the 4 Month Notice the landlord indicates it has all the necessary permits and approvals to do this work. The landlord also indicates in the space provided on the 4 Month notice that the planned work includes construction of a new building and that this requires demolition or removal of existing buildings. The tenant filed to dispute the 4 Month Notice on November 30, 2018 which is within the time limit for disputing the Notice.

***Landlord's position***

The landlord submitted that it has been awarded $10.4 million in funding from BC Housing to replace the two older single storey buildings, including the building where the tenant's rental unit is located, with a five story building that will have 104 rental units that will be run under a BC Housing operating agreement. The operating agreement will require the landlord to offer 20% of the new units with a "deep subsidy" or the equivalent of the income assistance shelter allowance; 50% of the new unit will have rents geared to income or 30% of the tenant's income; and, the remaining 30% of the new units will be rented at rates considered to be affordable market rent with a cap amount. This project will provide 75 additional affordable rental units to the community.

The landlord recognized that the local first nation has a consultative relationship with the district where the property is located (herein referred to as the City) and the landlord did a voluntary preliminary assessment of the property to determine the likelihood of finding native artifacts. While the preliminary assessment revealed the site has a medium to high likelihood of continuing artifacts, the landlord submitted that the first nation does not have permitting authority. Rather, the permitting authority remains with the City.

The landlord submitted that it has met all of the city's requirements to commence demolition and the landlord obtained a demolition permit from the city on October 19, 2018. The landlord hopes to commence demolition shortly after the tenant's rental unit is vacated and have "shovels in the ground" in May 2019. The rezoning process is currently on-going and there will be other permits that will be obtained as the property is redeveloped. The landlord is of the position that it does not require any other permits to commence demolition.

The landlord clarified that of the 29 rental unit that were in the two older buildings slated for demolition, the rental unit is the only unit that remains occupied by a tenant. The tenants of the other 28 units have been relocated to other units operated by the landlord and received a moving allowance. The landlord stated the tenant was offered four different units and a $500.00 moving allowance but she has declined the landlord's offers. Since the tenant declined the landlord's offers to relocate, the landlord served the tenant with the 4 Month Notice as a last resort.

The landlord submitted that it was not required to provide the tenant with a copy of the demolition permit at the time the 4 Month Notice was served but that the landlord's agent did provide the tenant with a copy of the demolition permit on November 16, 2018 after the tenant asked for a copy of it.

The landlord submitted that it has a good faith intention to demolish the building so as to accommodate a larger building that will provide housing to more people in need in the community.

***Tenant's position***

The tenant pointed out that the demolition permit was not attached to the 4 Month Notice although she did acknowledge receiving a copy of it after she requested a copy from the landlord.

The tenant was of the positon the landlord has not obtained all the permits and approvals required. In particular the tenant pointed to the requirement to obtain a permit for removal of hazardous materials such as asbestos before demolition work can commence. Also, utilities will have to be disconnected. In addition, the landlord needs approvals from the local first nation and development permits and other approvals in order to construct the new building.

The tenant pointed out that the letter that refers to funding has the wrong address on it.

The tenant acknowledged that she has been offered other rental units by the landlord but she did not accept what was being offered because the landlord wanted her to enter into new tenancy agreement that would change the amount of rent and has other terms she does not have in her current agreement. Also, the other units were not desirable to her.

The tenant was of the position the landlord has issued the 4 Month Notice in bad faith. The tenant submitted that the landlord has been making promises about relocation and compensation for several years and things keep changing. The tenant also indicated that the landlord is retaliating against the tenant(s) due to a previous dispute resolution proceeding decision concerning smoking on the property.

***Written submissions of landlord***

The landlord's legal counsel provided final arguments and submissions which, in summary, provided that the landlord has a good faith intention to end this tenancy and the other 28 tenancies of the two buildings slated for demolition to make way for a new, larger building that will provide more affordable housing to the community.

As for the tenant's assertion that the landlord will require permits or approvals to remove hazardous materials such as asbestos, the landlord countered that argument by submitting that the Ministry of Environment does not issue permits to entities such as the landlord to generate hazardous materials. Rather, where hazardous materials such as asbestos need to be removed from a building, WorkSafeBC BC stipulates that the landlord will have to:

> (a) have a qualified person inspect the site to identify any asbestos that may be handled, disturbed, or removed prior to demolition;
> (b) submit a Notice of Project form to WorkSafeBC a minimum of 24 hours before any asbestos removal work begins; and,
> (c) have trained and qualified asbestos-removal workers properly remove and dispose of all material containing asbestos.

The landlord submits that it will have the qualified persons on site and proceed in accordance with WorkSafeBC BC requirements if/when asbestos is identified.

The landlord maintains that a demolition permit is all that was needed in order to issue the 4 Month Notice and that all permits for the eventual construction on the site are not

needed at this time. The landlord's counsel pointed to a previous dispute resolution proceeding decision issued by an Arbitrator concerning closure of a manufactured home park that went before the Supreme Court of British Columbia under Judicial Review. In that case, *Howe v. 3770010 Canada Inc.*, the court held that the landlord only need permits/approvals in place to proceed with the specific purpose indicated on the Notice to End Tenancy and not the possible or eventual use of the property.

The landlord provided confirmation from the City that the landlord need only have the demolition permit in place to commence demolition.

***Written submissions of tenant***

The tenant submitted, in summary, the following arguments:

- The tenant argues that the authority for construction and demolition permits now rests with the province, not the local government. The tenant pointed to section 5 of the provincial *Building Act* that provides for changes that take effect December 15, 2018. The changes mean that local building codes are no longer in effect starting December 15, 2018 and are replaced by the BC Building Code.
- The tenant argues that the BC Fire Code that took effect December 10, 2018 requires the landlord to submit a fire safety plan prior to demolition and there is no such plan provided yet.
- The tenant argues that permits/approvals are not in place for removal of hazardous materials, such as asbestos. The tenant refers to a national asbestos convention held in 1986 that provides for measures to be taken to ensure workers are protected from exposure to asbestos.
- The tenant argues that the eviction would put the tenant in imminent danger and violation of her human right to housing. The tenant pointed to an article published by the UN with respect to the human right to housing and the impact of "forced evictions."
- The tenant questions whether the Act does not apply since supportive and independent housing is provided.
- The tenant questions the legal status of the landlord, including its Directors and employees under the *Societies Act* as the landlord has not provided evidence concerning this.
- The tenant argues that the term for the President of the society (landlord) ended in June 2018 and the 4 Month Notice was signed by the manager. The tenant suggests the manager is not qualified to do his job.

- The tenant argues that the tenancy has not been administered in accordance with the Act and that records are missing from her tenancy file and she has not been provided a written tenancy agreement.
- The tenant questions the tax status of the landlord and the ability to switch tenants to a “rent geared to income” format.
- The landlord asserts that the landlord has not proven that it has received the money for redevelopment and should do so before activity commences and there is an inaccurate address on the funding documents.
- A contractor for demolition has not been identified.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason indicated on the Notice. The burden of proof is based on the probabilities.

The 4 Month Notice that is the subject of this dispute was issued pursuant to section 49(6)(a) of the Act where it permits a landlord to end a tenancy where:

> (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:
>
> (a) demolish the rental unit;

A Notice to End Tenancy given by a landlord must comply with the notice requirements provided under section 52 of the Act. Section 52 requires that a landlord give a notice that is in the approved form, signed by the landlord; provide an effective date, and the reason for ending the tenancy. The 4 Month Notice given to the tenant in this case, was signed by the manager, provides an effective date, there is a stated reason for ending the tenancy and the form used is the form approved by the Director of the Residential Tenancy Branch.

There is no requirement in section 49 or 52 for the landlord to attach permits and approvals to the Notice to End Tenancy. Rather, the 4 Month Notice given to the tenant indicates the tenant may ask to see the permit(s). This is not a requirement but a suggestion with a view to avoiding disputes. Nevertheless, the tenant in this case requested a copy of the permit(s) and the landlord provided her with a copy of the demolition permit.

Having been satisfied the Notice to End Tenancy given to the tenant meets the form and content requirements of the Act, and indicates a reason for ending a tenancy as provided under the Act, I proceed to consider whether the landlord has proven it has a good faith intention to demolish the rental unit and had all the necessary permits and approvals to demolish the rental unit in place at the time of serving the Notice to the tenant.

***Permits and approvals***

In this case, the landlord had obtained a demolition permit from the City on October 19, 2018 which is before the 4 Month Notice was issued to the tenant. However, the parties were in dispute as to whether the landlord required other permits and approvals to be in place prior to issuance of the 4 Month Notice, which I shall analyze below.

The tenant submitted that permits/approvals are required in order to remove asbestos so as to protect workers and that no such approvals are in place yet. The landlord acknowledged that there are WorkSafeBC regulations in place that will require a qualified person to first identify hazardous materials such as asbestos; then a Notice of Project is to be provided to WorkSafeBC 24 hours before qualified persons remove and dispose of the hazardous materials. The landlord confirmed it shall comply with this requirement. Based on what is before me, I do not see that WorkSafeBC issues a permit or approval to the landlord before hazardous materials are identified by a qualified person or commencement of the asbestos removal.

With respect to the tenant's argument that the local building by-laws of the City were replaced with the BC Building Code effective December 15, 2018, the City had already issued a demolition permit to the landlord in October 2018 under its by-laws that were in effect at that time and I find the tenant did not provide me with sufficient evidence to demonstrate that permits already issued by the local government would be ineffective or invalidated with the change to *the Building Act*. Rather, I find it unlikely that would be the case.

The tenant submitted that the landlord must submit a fire safety plan prior to demolition under the BC Fire Code that took effect December 10, 2018. While that may be the case, this submission does not demonstrate that a permit or approval is then issued by the Fire Department or other authority. Rather, the information provided by the tenant merely indicates that the landlord must ensure compliance with the safety plan and fire code.

The tenant also argued that development permits or building permits for the redevelopment and construction of the new building are not in place. As held by the court in *Howe v. 3770010 Canada Inc.*, the landlord only need permits/approvals in place to proceed with the specific purpose indicated on the Notice to End Tenancy and not the possible or eventual use of the property. In this case, the specific purpose for issuing the 4 Month Notice is to demolish the rental unit. Accordingly, in keeping with the court's decision, I find that only the permit(s)/approval(s) necessary to demolish the rental unit need to be in place at the time the Notice to End Tenancy is issued.

The tenant submitted that funding for the redevelopment has not actually been received yet and the demolition contractor has not been selected or identified. The landlord did not need to identify a contractor in order to obtain the demolition permit. The demolition permit provides space for the owner to identify the contractor and the landlord clearly indicate a contractor has not yet been identified; yet, the demolition permit was still issued. I interpret that to mean the City did not require the landlord to identify a demolition contractor in order to accept and grant a demolition permit. Further, I find that re-development is a future state for the property and funding for redevelopment is not a pre-requisite for obtaining permission/approval from the City to demolish the two older buildings.

The parties raised arguments with respect to the standing of the local first nation providing approvals of the project. The landlord has provided confirmation from the City that the landlord need only obtain the demolition permit in order to commence demolition and I accept that the landlord's position that the first nation provides a consultative role with the City but that it is the City that holds the permitting authority for demolition, not the first nation.

In light of the above, I find the landlord has satisfied me that it had a demolition permit in place when the 4 Month Notice was served upon the tenant and that the demolition permit is the only permit/approval that was needed to issue the 4 Month Notice and commence demolition activities.

***Good faith intention to demolish***

I have found that the landlord has all the necessary permits and approvals in place to demolish the rental unit, and now I consider whether the landlord indents in good faith to demolish the rental unit.

The rental unit is one of 29 rental units in two buildings constructed in the 1970's. The other 28 rental unit have already been vacated by the other tenants and relocated by the landlord. Having applied for and obtained capital funding from the Province; having relocated the tenants of 28 other rental units and having made multiple offers to relocate the tenant; and, having obtained a demolition permit from the City, I accept that it is very likely the landlord truly intends to demolish the two older buildings on the property, including the building where the rental unit is situated.

I must also consider whether the landlord's intention to demolish the rental unit arose out of a good faith motivation. Residential Tenancy Policy Guideline 2: *Ending a Tenancy: Landlord's Use of Property* provides, in part:

> *Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.*

The landlord submitted that it intends to demolish the rental unit, as part of the two buildings that are slated to be demolished, to build a much larger affordable rental building after being been awarded capital funding by the Province. The landlord points to doing something similar in 2012 when an older building on the property was replaced with a newer, larger building upon securing funding from the Province. Also, to demonstrate the landlord is acting with goodwill, the landlord relocated the other 28 tenants of the buildings slated for demolition and offered the tenant four other units.

The tenant appears to question whether the funding is in place and points to an error in the address of the funding letter; and, that promises concerning relocation have been on-going for years. When I compare the rental unit address to the address on the funding letter, I see two different addresses. However, a search of the area shows that both addresses are at the same intersection and point to the same large property where the two older buildings are clearly. Therefore, I am satisfied that the approved funding applies to the parcel of land where the two buildings slated for demolition are located and the intended location of the new building.

The tenant also submits that the landlord is motivated to end the tenancy out of retaliation for an earlier dispute pertaining to smoking. I find it inconceivable that the landlord would undertake the time and expense to demolish two buildings and relocate tenants so as to end the tenancy and/or the other tenancies due to a previous dispute concerning smoking.

The tenant object to the landlord offering her other units but with a new tenancy agreement that provides for a rent-geared-to-income formula, among other things, and units that were not desirable to her. The Act does not require a landlord to provide alternative accommodation to a tenant in order to end the tenancy for demolition. The landlord has offered alternative accommodation to all of the tenants affected by the proposed demolition and gave them a moving allowance, which I find to be a significant gesture of goodwill. However, I find it worth noting that rent-geared-to-income formula is considered affordable rent. It would appear to me that the landlord has in the past obtained "affordable" rents from the tenants in the past, and will continue to obtain "affordable" rents from the tenants for alternative units provided to the displaced tenants. Therefore, I find the landlord is not motivated to demolish the rental unit so as to obtain significantly higher rents or in retaliation for the tenant's previous success in securing the right to smoke in her unit.

As I stated during the hearing, tenancy agreements run with the rental unit; thus, a new tenancy would have to form for a different rental unit. If the tenant is not agreeable to the terms of tenancy being offered by the landlord for a different unit, it is the tenant's prerogative to try to negotiate and ultimately accept the mutually agreeable terms or reject the offer and find accommodation elsewhere.

In light of the above, I find I am satisfied the landlord has a good faith intention to demolish the two older buildings on the property, including the rental unit.

**Other issues**

The tenant submitted that she does not have a written tenancy agreement. The Act applies to residential tenancy agreements between a landlord and a tenant and under section 1 of the Act the definition of tenancy agreement includes written and oral agreements.

The tenant asserted the landlord has violated tenancy laws in other ways. I find the relevance of assertion to this matter to be unclear. With respect to the more specific issue concerning smoking, I have already addressed that in the previous section that dealt with the good faith requirement.

The tenant questioned the application of the Act to the living accommodation since independent and supportive housing is provided. Section 4 of the Act exempts specific living accommodation from application of the Act. Supportive housing and independent living units are not exempt from the Act.

The tenant questions the tax status and the landlord's status under the *Societies Act* and whether the manager who signed the 4 Month Notice had capacity to do so. A tenancy agreement and a rental unit is provided by a landlord. A tenancy may also be ended by a landlord in certain circumstances as provided under the Act. To be a landlord under the Act, the entity/person must be the owner of the property or the owner's agent. An owner has the right to appoint an agent to act on its behalf and the owner does not have to justify the choice of agent to the tenant. In this case, the landlord is an organization that has provided living accommodation to the tenant an is the same organization that issued the 4 Month Notice to the tenant. The tenant identified the same organization as being her landlord in filing this application and served the landlord with notification of the dispute. Agents and a lawyer appeared on behalf of the landlord. The landlord's agents did not indicate the Notice was served upon the tenant contrary to the intentions of the landlord or that the Notice was signed by an unauthorized agent or employee of the landlord. I find the tenant's attempt to cast doubts about the landlord's standing or the standing of its agents and employees do not give me cause to cancel the 4 Month Notice.

In conclusion, I find the Act applies to this tenancy; the landlord issued a Notice to End Tenancy to the tenant that meets the form and content requirements of the Act; the landlord had the necessary permits and approvals in place to demolish the rental unit when the Notice to End tenancy was issued; and, I am satisfied the landlord has a good faith intention to demolish the rental unit. Therefore, I uphold the 4 Month Notice dated October 31, 2018 and I dismiss the tenant's request that I cancel it.

In light of the above, I find the tenancy shall end on the stated effective date of March 1, 2019 and the tenant must vacate the rental unit by that date. Pursuant to section 55(1) of the Act, I provide the landlord with an Order of Possession effective at 1:00 p.m. on March 1, 2019.

Conclusion

The 4 Month Notice is upheld and the tenant's application that I cancel it is dismissed. The landlord is provided an Order of Possession effective at 1:00 p.m. on March 1, 2019 to serve and enforce upon the tenant.

The other remedies sought by the tenant on her application were severed and dismissed with leave.

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: January 31, 2019

Residential Tenancy Branch