Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FFT

Preliminary Issue – Rescheduling of this Hearing

I note that this hearing was originally scheduled for December 21, 2018 at 9:30 a.m., however, the Residential Tenancy Branch staff decided to reschedule the hearing to December 28, 2018 at 9:30 a.m. Therefore, the service of documents, referenced in the "Introduction" section of this Decision, pertains to the original notice of hearing provided to the applicant for the December 21, 2018 hearing and was required to be served on the respondent by the applicant, whereas it is the Residential Tenancy Branch's responsibility for providing notice of a rescheduled hearing to a respondent.

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition of Rental Unit (Four Month Notice), pursuant to section 49 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Application for Dispute Resolution served by Canada Post registered mail. The tenant's evidence submitted to the Residential Tenancy Branch dispute website consisted of copies of: the Four Month Notice dated October 14, 2018 issued by the landlord; a building permit dated October 1, 2018 issued by the municipality (building permit number is recorded on the cover sheet of this Decision) for

the rental property under dispute; and a payment receipt for the demolition deposit associated with the building permit.

The landlord confirmed that he was in possession of the evidence submitted by the tenant. The landlord also confirmed that he did not submit any evidence in this matter.

Based on the testimonies of the parties, I find that the landlord was served with the tenant's application and notice of this hearing in accordance with section 89 of the *Act*.

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

Should the landlord's Four Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Four Month Notice?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Although the parties confirmed that there is a written tenancy agreement between them, neither party submitted a copy into evidence. Therefore, the parties confirmed their understanding of the following terms of the tenancy agreement:

- The rental property consists of an upper level rental unit and a main level rental unit. The tenant has resided in the rental property with her family for approximately 13 years, previously residing in the upper level rental unit but now residing in the main level rental unit. The landlord purchased the rental property and assumed the existing tenancy in July 2016. The tenancy agreement between the parties was formalized in a written tenancy agreement dated July 1, 2016 for a one-year fixed term. At the end of the fixed term, the tenancy continued on a month-to-month basis.
- Current monthly rent of $1,500.00 is payable on the first day of the month.

- The tenant paid a security deposit of $750.00 at the beginning of the tenancy to the prior property owner. This security deposit was transferred with the sale of the property to be held by the current landlord.

The landlord testified that he served the Four Month Notice to the tenant's minor son on October 14, 2018.

The Four Month Notice, submitted into evidence, provides: the rental unit address; an effective vacancy date of February 15, 2019; is signed and dated by the respondent who testified that he is one of the business partners, and therefore a landlord for the purposes of the *Act*; and the grounds for issuing the Four Month Notice as "demolish the rental unit."

The landlord testified that the first step in the demolition process is to test the home for hazardous materials. Once that has been identified, the salvage and abatement work can take place approximately one week later, however the property must be vacant for that work to begin. The landlord confirmed that the building permit submitted into evidence allows for the salvage and abatement work to be undertaken. Only after the salvage and abatement has been completed and inspected, can the landlord get permits for demolition of the home.

The tenant testified that she had been in contact with municipal staff and had been advised that the landlord's application was under review for obtaining permits. The tenant further testified that the landlord has not done any testing for hazardous materials and that the payment receipt for the demolition deposit states that it is not a permit and does not provide authorization for work to proceed.

The tenant also referenced a new municipal bylaw taking effect in January 2019 that pertains to requirements for recycling and green disposal with respect to demolition projects. The tenant stated that there may be further requirements to be met by the landlord as a result of the upcoming bylaw.

The tenant testified that she is very attached to her rental home as she has raised her family in the home and hoped that she could be allowed to remain in the rental unit until June 2019 to allow her son to complete high school which he attends near their home.

The landlord acknowledged that the tenant is a good tenant and stated that he has not raised the rent since he took over the property in recognition of that. However, he

testified that he could not delay the project that long due to the summer construction window.

The parties discussed possible settlement options but ultimately were unable to come to a mutually agreeable settlement of their dispute. As such, their dispute has been determined in accordance with the legislation and the policy guidelines.

Analysis

Section 49(6)(a) of the *Act* provides that 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 demolish the rental unit.

Section 49(8)(b) of the *Act* provides that a tenant may dispute a Four Month Notice by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

In the hearing, I asked the tenant if she had any reason to call into question the good faith intention of the landlord to demolish the rental unit, which is the stated purpose for ending this tenancy.

The tenant stated that she believed the landlord intends to follow through with his plans to tear down the rental unit and build a new duplex as he had also purchased the neighbouring property. The tenant believed that it might take longer to accomplish this than the landlord planned.

The tenant testified that she felt the landlord had not demonstrated good faith in how he has gone about serving her the Four Month Notice, as he served the notice to her minor son instead of directly to her, and she pointed out to errors/omissions by the landlord on the Four Month Notice, specifically the incorrect effective vacancy date and the landlord's failure to check off the following box on the Notice:

- *I have obtained all permits and approvals required by law to do this work.*

In this matter, the landlord failed to serve the Four Month Notice to the tenant in accordance with section 88 of the *Act*, as the landlord personally served the notice to the tenant's minor child. However, the tenant testified that she was eventually in receipt of the Four Month Notice as of October 19, 2018.

As such, I find that the tenant was sufficiently served in accordance with section 71(2)(b) of the *Act*, as the tenant was in receipt of the Four Month Notice as of October 19, 2018 and filed an application to dispute the notice on November 12, 2018, which is within the 30 days required by the *Act*.

The tenant noted that the effective vacancy date of February 15, 2019 on the Four Month Notice is incorrect. I explained to the parties in the hearing that an incorrect effective vacancy date does not invalidate the notice as section 53 of the *Act* automatically corrects the date to the earliest available date that complies with the required notice period. In this case, the effective vacancy date is corrected to February 28, 2019.

Section 52 of the *Act* sets out the form and content requirements for a valid notice to end tenancy. In considering this matter, I have reviewed the Four Month Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice (which is autocorrected in this case); and explains the grounds for the tenancy to end. Regarding the landlord's omission in checking off the additional box on the Four Month Notice, I find that this does not invalidate the Notice as it is not a requirement under section 52 of the *Act* for form and content. However, it is a requirement for the landlord to actually have all required permits and approvals required by law to do the work, in order to issue the Four Month Notice in the first place.

In determining whether the landlord's current building permit for salvage and abatement is all the necessary permit and approval required by law for the landlord to do the work, I refer to Residential Tenancy Policy Guideline #2. Ending a Tenancy: Landlord's Use of Property, which addresses the requirements for ending a tenancy for landlord's use, including for demolition of the property, as follows, in part:

> *B. PERMITS*
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> *When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.*

> *Some local governments may not issue permits unless a rental unit is already vacant. They may require certain things to be done first that may render the building uninhabitable or may involve withdrawing essential services and facilities. These requirements may include providing a clearance report from an industrial hygienist confirming whether hazardous materials, if encountered, have been safely removed and ensuring that utility services (gas, power, water, sewer) have been severed and constructing a safety fence around the site.*
>
> *If this is the case, landlords may be able to obtain a conditional demolition permit in an effort to meet the requirements of the Act while still recognizing the municipality's preconditions for a final permit. An arbitrator may consider conditional permits when determining the validity of a notice to end tenancy.*
>
> *…*

I find that the building permit submitted into evidence by the tenant is dated October 1, 2018, and the Four Month Notice is dated October 14, 2018, which is after the landlord obtained the building permit. As such, I find that the landlord waited until he had the permit before serving the notice to end tenancy on the tenant, as required the *Act*.

I note that at the top of the second page of the building permit, it states:

> *Work under this permit is limited to salvage and abatement. A separate building permit is required to demolish or deconstruct the building. A survey for hazardous materials must be completed prior to any salvage work.*

The landlord confirmed his understanding that a hazardous materials assessment would need to be done prior to salvage work being undertaken. The landlord explained that the salvage work could begin the following week, after the hazardous materials assessment was completed. I find it reasonable that the landlord would wait until the rental unit was vacant to undertake a hazardous materials assessment of the home, given that it could require section of wall or flooring to be cut into and removed. I find this to be a more prudent course of action for the safety of the tenants as well.

Although the tenant referenced a conversation with municipal staff informing her that the permit was under review and therefore not a valid permit, I find no evidence on the face of the permit, or submitted by the tenant to support this allegation. I also find that the tenant has not submitted any evidence to support her claim that the landlord may potentially be subject to proposed disposal bylaws that could impact the demolition project.

Therefore, based on the evidence before me, I do not find that there is any permitting or other legal impediment to the landlord to begin salvage and abatement work once the hazardous materials survey is completed, as the building permit submitted into evidence permits salvage and abatement work. Understandably, the salvage and abatement work can only begin once the landlord has vacant possession of the rental unit. As such, I find the building permit that is before me for consideration to be a "conditional" permit as explained in Policy Guideline 2 noted above, and meets the requirements of the *Act*. It is reasonable that the demolition process is a multi-phase approval process, to ensure the proper handling of hazardous materials and reducing waste.

Therefore, based on the evidence and testimony before me, on a balance of probabilities, I find that the building permit obtained by the landlord on October 1, 2018, permitting salvage and abatement in order to begin the demolition process, to be sufficient evidence of having all the necessary permits and approvals required by law to demolish the rental property as stated as the purpose for issuing the Four Month Notice to end the tenancy.

Given my finding that the landlord has sufficiently proven the grounds for issuing the Four Month Notice, the tenant's application to dispute the notice is dismissed. As the tenant's application is dismissed, and I have found that the Four Month Notice meets the form and content requirements of the *Act*, I must grant the landlord an Order of Possession on the basis of the Four Month Notice. As noted earlier in this decision, the effective vacancy date of the Notice is corrected to the earliest available date that complies with the required notice period, which in this case is February 28, 2019.

As the tenant was unsuccessful in her application, she must bear the costs of the filing fee for her application.

Conclusion

The tenant's application for dispute resolution is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective as of 1:00 p.m. on February 28, 2019. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 2, 2018

Residential Tenancy Branch