Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Regional District and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and to recover the filing fee.

The hearing was conducted via teleconference and was originally scheduled for June 5, 2018. That hearing was adjourned by agreement of both parties. On August 31, 2018, I wrote an Interim Decision regarding the adjournment. Both that Interim Decision and this Decision should be read together.

The next hearing was scheduled for October 25, 2018 but later requested to be re-scheduled by agreement of both parties. The final hearing was conducted on January 17, 2019, by teleconference.

The first hearing was attended by legal counsel for both parties and two agents for the landlord. The final hearing was attended by legal counsel for both parties; 4 of the 6 occupants of the subject properties; 5 agents for the landlord and three witnesses called by the landlord.

Both parties provided a significant volume of evidence and submissions prior to the hearing and had served these documents to each other. Neither party raised any concerns or issues related to the service of the tenant's Application for Dispute Resolution or their respective evidence packages.

During the adjournment the landlords submitted a request for a summons for one of their witnesses on the grounds he required the summons for his employer's permission to attend the hearing. I ordered this summons on August 31, 2018. When the hearing was re-scheduled the landlords requested an updated summons, I issued the updated summons on January 2, 2019.

Also, during the adjournment and prior to the October 25, 2018 hearing date the tenant requested that an official transcript be allowed, pursuant to Residential Tenancy Branch Rules of Procedure 6.11, 6.12, and 6.13. The tenant's legal counsel communicated

with a Senior Information Officer from the Residential Tenancy Branch regarding the request. I ordered the tenant would be allowed to have an official transcript if they submitted the required information outlined in Rule of Procedure 6.12 including making arrangements for securing a court reporter and providing evidence to me prior to approval regarding the accreditation of the court reporter service.

Through further communication the Senior Information Officer was informed that counsel could not arrange for their usual court reporter service to attend the hearing and asked if they could simply record the proceeding themselves and have it transcribed to paper later. Through the Senior Information Officer, I advised counsel that would not be acceptable.

Counsel submitted accreditation documentation for a different service provider and I approved the request. There were no follow up requests for a court reporter after the hearing had been re-scheduled from October 2018 to January 2019. As such, I clarified with the tenant's counsel at the start of the hearing on January 17, 2019 that they had not arranged for the court reporter and they were no longer requiring an official transcript.

While I did not confirm at the time I note that, as per Rule of Procedure 6.11 neither party was allowed to record either hearing of June 5, 2018 or January 17, 2019.

I also note that during the January 17, 2019 hearing the tenant sought to submit to pieces of additional evidence. One piece was in relation to email communication between the occupant C.E. and the Residential Tenancy Branch dated May 29, 2018. The landlord did not object to the submission of this email, as such I allowed it.

The tenant sought to submit additional evidence in support of their position related to the merits of the Application, in the form of the complete local relevant by-law from the local community regarding zoning and development and real property. The landlord objected to the submission of any additional evidence at this time. Residential Tenancy Branch Rule of Procedure 2.5 states:

> "To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:
>
> • a detailed calculation of any monetary claim being made;
> • a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
> • copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*]."

Rule 3.14 also states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

And finally, 3.17 provides that:

> "Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute* Resolution], 3.1, 3.2, 3.10.5, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
>
> Both parties must have the opportunity to be heard on the question of accepting late evidence.
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> If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*]."

I ordered that I allowed the tenant to submit only the email from the Residential Tenancy Branch, as this related to the process of application for dispute resolution. Based on the rules of procedures, as noted above, and the fact that tenant has had the bulk of the landlord's evidence since May 25, 2018 and the remainder by October 16, 2018, I find there is no reason to allow the tenant to submit additional evidence in support of their application at the time of the hearing.

However, I note the tenant did submit a copy of the bylaw. Based on my finding above I have not considered this submission by the tenant.

In the tenant's written submission, at line 11, the tenant states:

> Cabin 4 was occupied until July 2014. When the resident left, Metro Vancouver denied access to Cabin 4 by putting an interlocking metal fence around it. Metro

Vancouver decreased the rent payable proportionately under the Lease, so that BSPS would pay rent based on occupying six Cabins.

I note that Section 55 of the *Residential Tenancy Act (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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Matters

At both the initial hearing and the reconvened hearing the landlord raised the issue that the people identified on the Application for Dispute Resolution, while they were the occupants of the residential properties and are, for the most part, directors of the Society that is the tenant they, as individuals did not have the right to file the Application on behalf of the tenant.

If this were so, the landlord argued this Application for Dispute Resolution should be dismissed as the applicants are not parties to the tenancy.

Both parties submitted copies of a previous and a current tenancy agreement listing the landlord as the Greater Vancouver Regional District and the Belcarra South Preservation Society (the Society). The landlord submitted that the current name of the landlord is the Metro Vancouver Regional District. While the landlord provided no documentary evidence of the change in name of the landlord the tenant did object or raise any concerns with the name change of the landlord.

The landlord, however, provided submissions seeking to have the applicants/occupants found as not having authourity to file this Application for Dispute Resolution to cancel the subject notice to end tenancy as individual occupants of the property as they were acting as individuals and not as directors of the Society.

In support of their position the landlord has submitted into evidence relevant excerpts from the *Societies Act*; the *Business Corporations Act*; and a copy of the Constitution and By-laws of the Society.

The landlord submitted that pursuant the *Societies Act* and the *Business Corporations Act* no individual member or director of the Society has the right to initiate a legal proceeding on behalf of the Society unless the Society has provided authorization for the individual to do so by way of holding a meeting to address the issues in accordance with the Society's Constitution and By-laws.

The landlord submits the Society's By-laws require that a meeting of the Society requires a 21-day notification to members of the Society. The parties agree that the

Notice to End Tenancy for Landlord's Use of Property was served on the tenant on March 14, 2018. The occupant C.E. testified that she filed the Application for Dispute Resolution on March 29, 2018.

I note that Section 49 of the *Act*, at the time the subject Notice was issued, allowed a tenant who received a Two Month Notice to End Tenancy for Landlord's Use of Property to file their Application to dispute the Notice no later than 15 days after receipt of the Notice. I find the applicants submitted their Application on the last possible date to do so. Section 49 goes on to say that if the tenant does not dispute the Notice within the 15 days they are conclusively presumed to have accepted the end of the tenancy.

The occupant C.E. testified that she is the one who submitted the Application for Dispute Resolution seeking to cancel the Notice to End Tenancy. She stated that when she was completing the on-line Application the system would not allow her to submit the Application using the Society name and so she listed all the names of the occupants. The occupant confirmed that she did not seek guidance at any time from anyone at the Residential Tenancy Branch in regard to how to complete the Application in the Society's name.

I note this is in contrast to the written submissions of the tenant which indicate that the occupant C.E. had submitted the Application naming the Society but that it was the Residential Tenancy Branch that altered the Application. This is simply not done, once entered by the Applicant party, the Branch will process the Application in the names provided by the party entering the detail into the system.

In regard to the landlord's submissions referencing the *Societies Act* I note specifically that generally notification for general meetings requires notification to the members of the Society of not less than 21 days and written notification is required at least 14 days prior to the meeting or at least 7 days prior to the meeting if the By-laws allow for it.

The tenant submitted that they did in fact conduct a meeting, albeit less formally announced and recorded than outlined in the Constitution and By-laws. They argue that had they waited the required 21 days they would have defaulted on their ability to apply within the required time allowed under Section 49 of the *Act*.

The tenant provided they, in fact, did conduct a meeting of the Board of Directors on March 27, 2018 at which all Directors attended, and that email notification was provided to the Directors to attend. They also submitted that a record of decisions was sent by email; individual Directors notes; and potentially subsequent follow up emails. The tenant provided no copies of any of these proceedings.

The landlord submitted that the tenant had been made aware of the landlord's position that the individual occupants had no authourity to submit the Application at least since

the original hearing date of June 5, 2018 and as such should have provided documentary evidence of their meeting instead of relying on testimony only.

I find based on the credible testimony of two members of the Board of Directors that a meeting was held by the Board to discuss the options available to the Society to deal with the subject Notice to End Tenancy. I also acknowledge that there was no evidence before me that such a meeting did not occur despite the landlord's position that the tenant provided no documentary evidence to support their claim.

I accept that the Board could have convened a meeting in accordance with their own Constitution and By-laws requiring 21-day notification to the members. However, had the Board followed their By-laws they would have not been able to submit their Application for Dispute Resolution seeking to cancel the Notice to End Tenancy within 15 days in compliance with the requirement under Section 49 of the *Act.* As a result, the tenant would have been found to be conclusively presumed to have accepted the end of the tenancy without an opportunity to dispute the Notice at all.

I also note the tenant's written submissions state that once an Application for Dispute Resolution is accepted by the Residential Tenancy Branch an Arbitrator must not dismiss it on the grounds that it does not comply with Section 59(2). However, administrative staff at the Residential Tenancy Branch do not have authourity delegated to them to refuse to accept an Application, under any circumstances.

As such, until an Arbitrator reviews an Application; evidence and relevant testimony of both parties, all options on the claim are open to the authourity delegated by the Director to the Arbitrator, including the ability to dismiss a claim if it does not name parties to a tenancy. As such, I find that I do have authourity to determine if the tenant has applied to dispute the subject Notice to End Tenancy.

Regardless, in the case before me, I find there is sufficient credible testimonial evidence that the occupant C.E. had authourity to act on behalf of the Society in submitting the Application for Dispute Resolution seeking to cancel the Notice to End Tenancy issued by the landlord on March 14, 2018, when the Application was submitted on March 29, 2018.

As to whether or not the individual occupants and/or Board members had authourity to submit their Application using their own names or the Society name, I find that difficulties with a computer system used without the benefit of specific access to help when confronted with a unique problem that might confuse the applicant should not prevent the applicant from access to natural justice and administrative fairness.

I do however, note that the occupant BT is not a Board member and as such, had no authourity as an occupant to be a party to this Application.

While I think it would be reasonable for a person who made an Application, believing to be stated in one way, to have the Application corrected in a timelier fashion, I find there was no prejudice to the landlord in responding to the Application brought forward by this applicant.

Based on the above, I order the 5 named Board members of the Society are allowed to submit this Application for Dispute Resolution on behalf of the Society. I also order that the applicant name be amended to be the Belcarra South Preservation Society, pursuant to Rule of Procedure 7.13 and Section 64(3)(c) of the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49 and 72 of the *Act.*

Should the tenant be unsuccessful in cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property it must be determined if the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

Background and Evidence

As noted above, the parties submitted two tenancy agreements. The most recent agreement was signed by the parties on March 1, 2006 for a one-year fixed term tenancy beginning on March 1, 2006 and converting to a month to month tenancy on March 1, 2007. Current rent is in the amount of $3,119.00 due on the first day of each month.

The landlord seeks to end the tenancy and issued a Two Month Notice to End Tenancy for Landlord's Use of Property on March 14, 2018 citing the landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use. Despite the requirement under the *Act,* at the time the Notice was issued, to allow only two months notice in such circumstances the landlord allowed for an effective vacancy date of September 30, 2018 (over 6 months notice) to comply with a term set forth in the tenancy agreement.

There is no dispute between the parties that the Notice to End Tenancy was received by the tenant on March 14, 2018.

The parties agree the tenancy agreement is for the rental of Cabins 1 to 7 in the Regional Park which include Cabin 1 located within the boundary of the village of Belcarra and Cabins 2 through 7 within the boundary of the city of Port Moody.

The landlord submits that on November 24, 2017 the landlord's Board of Directors approved a plan to convert the Cabins from non-residential use to be fenced off with no access by the public to the interiors but that they would become "public use interpretive landscape displays". In the tenant's evidence (which was also uploaded by the landlords) there is a proposal that outlines some of the details.

Specifically, the proposal outlines, among other things:

- The future of Cabin 1 requires further review and discussion with the Village. At the time of writing it indicated that staff were conducting a study to learn more about the history of the building;
- Cabins 2, 3, 5, 6, and 7 will be stabilized and retained in compliance with their heritage designation and the Cabin's use as "interpretive landscape displays" with no public access to cabin interiors;
- Cabin 4 requires being rebuilt if appropriate permitting can be obtained and its use will be the same as Cabins, 2, 3, 5, 6, and 7. I note that this document indicates a tree has fallen on Cabin 4.

The landlord has submitted documentary evidence in the form of email correspondence and oral testimonial evidence for representatives from both municipal jurisdictions indicating that based on the understanding of the landlord's plans no permits are required for the conversion from residential properties to the non-residential purposes the landlord has indicated to them.

Specifically, the landlord's witness PW representing the village of Belcarra testified that the landlord's intended purpose is allowed under the zoning bylaw 501.2 which allows for park facilities; parking area; passive outdoor recreation use; boat launch use; and single family residential use.

Likewise, the landlord's witnesses AB and RM, representing Port Moody, confirmed that since the intended use of the Cabins does not include any occupancy no occupancy permits would be required. They did acknowledge that there had been no heritage alteration permits issued; if the structures required repairs there may be a need for permits depending on what the repair(s) might be; permits might be required specific to the heritage status of the Cabins if they are in state of disrepair; and that no fencing permits were required.

The tenant relies on a copy of the minutes of the November 24, 2017 meeting of the Metro Vancouver Regional District Board of Directors – Parks. In those minutes it is recorded that:

> The Main Motion as amended now reads as follows: That the MVRD Board:

a) approve the revised Belcarra South Proposed Design Concept, which changes the use of the Belcarra South area of the regional park from restricted access residential use to non-residential public use;
b) retain those buildings protected with Port Moody heritage designation (Cabins 2-7 and Bole House);
c) direct staff to investigate options for Cabin 1, and report back to the MVRD Board; and
d) direct staff to work with the municipalities of Port Moody and Belcarra on the implementation of the Belcarra South proposed design concept.

The tenant also relies on the wording from the proposal noted above that Cabins 2 to 7 will require work to be stabilized so that they can be compliant with the heritage designations.

The proposal specifically states:

> "All of these buildings will need to be stabilized and upgraded for continued retention. This work will include installing foundations, and securing the building envelope in a way that respects the historical elements of the buildings. The stabilization work is a significant undertaking. All work on the Cabins 2-7, and the Bole House will require heritage alteration permits from the City of Port Moody."

The tenant submitted that a landlord cannot just end a tenancy because they don't want the property used for residential purpose but rather they must have the ultimate "use" and how they get there determined. That is to say that if the plans are uncertain as to what the use will be the landlord cannot end the tenancy to leave the unit vacant. In addition, they submit that if the landlord knows the purpose for which the unit will be used they must have all the required permits to allow the landlord to achieve that usage.

The tenants also are of the position that since the Cabins all fall under one tenancy agreement that the conditions for the non-residential use of all the Cabins must be considered together before the landlord can end the tenancy.

The tenant proposed that because the motion passed at the November 24, 2017 meeting of the Board of Directors includes a provision for staff to continue investigations into the uses for Cabin 1 that the landlord has not established that the intention of vacating Cabin 1 is to change it another use.

Further, since the motion requires retention of Cabins 2 to 7 that are protected by the Port Moody heritage designation and the proposal document stipulates that these Cabins must be stabilized the tenant submits that the landlord will require permits to complete the stabilization of these heritage structures.

Analysis

I have considered all submitted documentary and testimonial evidence of both parties with the exception of the tenant's late submission, on the day of the hearing, as noted in the Introduction above.

At the time the Notice to End Tenancy was issued Section 49 of the *Act* allowed a landlord to end a tenancy by issuing a Two Month Notice to End Tenancy for Landlord's Use of Property if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

I accept from the submissions of both parties that the landlord is intending to change the purpose of the residential property containing the subject Cabins. However, I am persuaded by the tenant's submissions that in the case of Cabin 1, the landlord has not yet determined what that use will be. As such, I am not convinced the landlord has established the purpose will not be for residential use. I make this finding, in part, based on the submissions of the proposal documents and meeting minutes submitted into evidence.

In addition, I am persuaded by the tenant's submissions, including the proposal and the Board of Director's minutes that in order to use Cabins 2 to 7 these Cabins will require some form of work to stabilize them and ensure they are compliant with the heritage designation.

Furthermore, I find that the landlord themselves have identified that Cabins 2 to 7 require some work to stabilize them and the ensure that they are compliant with the requirements of heritage designated properties. I accept the testimony of the landlord's witnesses from Port Moody who indicate that no heritage permits have been issued for any of these cabins.

While I find the identification of the use as an "interpretive landscape display" to be somewhat vague, I am satisfied that part of that purpose, at least for those Cabins with heritage designation, will be based on the importance the Cabins have meant to the local area and history.

Webster's New English Dictionary and Thesaurus defines "use" as to put to some purpose or to utilize. As such, I concur with the tenant's position that the purpose cannot simply be for each of the Cabins to be left vacant but rather they are intended to become an integral part of the park experience, as per the landlord's identification of them as "interpretive landscape displays".

Based on the above, I find the landlord has failed to establish they have a purpose for Cabin 1, including whether or not it will be an interpretive landscape display. As such, I find there is no reason to end the tenancy, at this time, for Cabin 1. I am further

persuaded by the tenant's argument that since all of the Cabins are rented under one tenancy agreement, that if the landlord has not yet defined a use for Cabin 1 that the tenancy should not be ended.

Even so, I also find, on a balance of probabilities, that from their own documents and witnesses, the landlord has identified that some, if not all of Cabins 2 to 7 require work that may require permits and that the landlord has not acquired any permits or confirmation what stabilization work will be required to turn them into "interpretive landscape displays" or if that work will require permits from the local municipalities.

As a result, I am not satisfied that the landlord has determined a "use" for one of the cabins and that all the necessary permits required by law have been obtained by the landlord that may be required to convert the remaining cabins from residential accommodation to interpretive landscape displays.

Therefore, I find the landlord has failed to establish sufficiently they currently have not established compliance with the requirements for ending the tenancy for landlord's use of the property as required by Section 49 of the *Act*.

Conclusion

Based on the above, I order the Two Month Notice to End Tenancy for Landlord's Use issued by the landlord on March 14, 2018 is cancelled and the tenancy will continue until ended in accordance with the *Act*.

I find the tenant is entitled return of the $100.00 fee paid by the tenant for this application. Pursuant to Section 72(2)(a), I order the tenant may deduct this amount from future rent payment.

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: February 15, 2019

Residential Tenancy Branch