



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SCANDINAVE SPA IN WHISTLER
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, AAT, FFT

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49;
- an Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the landlord's legal counsel and the landlord's administrator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution was confirmed in accordance with section 89 of the *Act*.

I note 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue- Evidence

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the “Rules”) states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Section 3.15 of the *Rules* states that the Respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Counsel for the landlord testified that neither he nor the landlord received the tenant’s evidence package. The tenant testified that he personally served the landlord with his evidence package at the landlord’s place of business on May 12, 2019.

I note that the only piece of evidence the tenant uploaded to the Residential Tenancy Branch that was not in the landlord’s evidence package was a reference letter.

As the landlord did not receive the reference letter, I exclude it from consideration. I note that the exclusion of the reference letter had no bearing on the outcome of this decision.

Counsel for the landlord testified that the tenant elected to be served with documents for this dispute via e-mail. Counsel for the landlord testified that the tenant was served with the evidence for this hearing via e-mail and an attachment on May 10, 2019. The tenant testified that he received the e-mail but the attachment was an image of counsel’s corporate logo, not the evidence package. Given the service issues surrounding evidence for both parties, I stated that I would adjourn the hearing and provide both parties an opportunity to serve the other in accordance with section 88 of the *Act*. The tenant testified that he would rather have the landlord’s evidence admitted than adjourn the hearing. Counsel for the landlord did not object.

During the hearing Counsel for the landlord e-mailed the tenant the landlord’s evidence package and the tenant confirmed receipt of it during the hearing. I find that the tenant was sufficiently served with the landlord’s evidence, for the purposes of this *Act*, in accordance with section 71 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to an Order to Allow Access for the tenant or their guests, pursuant to sections 30 and 70 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately two years ago and is currently ongoing. The subject rental property is staff housing for the landlord; however, the tenant is not an employee of the landlord. Prior to living in the subject rental property, the tenant lived in a different suite in the landlord's staff housing. Monthly rent in the amount of \$675.00 is payable on the first day of each month.

The administrator testified that at the time the tenant moved into the landlord's staff housing, there was not a shortage of staff housing and so the landlord agreed to rent the tenant a suite even though he was not an employee of the landlord. The administrator testified that housing for staff in the city in question has reached crises levels and that the tenant is the only non-staff person residing in the landlord's staff housing.

The landlord's administrator testified that at the end of February 2019 the tenant was served via registered mail with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit with an effective date of July 31, 2019 (the "Four Month Notice"). The landlord's administrator testified that the tenant received the Four Month Notice on March 1, 2019. The tenant testified that he received the Four Month Notice on March 1, 2019.

The Four Month Notice states that the landlord is ending the tenancy because the landlord is going to:

- Convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The Four Month Notice states:

- No permits and approvals are required by law to do this work.

Counsel for the landlord submitted the following. The landlord's staff housing is directly beside the landlord's business which is an indoor/outdoor spa. One feature of the spa is that guests are encouraged to remain silent while at the spa. The landlord has invested a significant amount of time and money into its brand and reputation which involves keeping the lands around the spa pristine and quiet. The proximity of staff housing to the spa has presented a number of challenges as most of the staff who reside in the staff housing are seasonal employees who are typically in their 20s. The landlord has encounter issues with some of its employees living at the staff accommodation making noise or leaving the area around staff accommodation in an untidy condition.

In addition to the above, the affidavit of the landlord's administrator, which was entered into evidence states that the following issues have arisen at the staff accommodation:

- snow and ice buildup on the walking paths to and from the staff accommodation units;
- visitors to the staff accommodation parking in stalls reserved for the landlord's customers;
- garbage and litter accumulating outside of the staff accommodation;
- the common areas of the staff accommodation being untidy and dirty;
- monthly cleanliness and maintenance inspections of the individual units not be completed consistently or in a timely manner; and
- delays with respect to repairing damage and performing preventative maintenance on individual units or common areas in the staff accommodation.

Counsel for the landlord submitted that in order to address the issues outlined above, the landlord has decided to hire a staff housing caretaker to live in the staff accommodation. The job description for the above position was entered into evidence, the job title is "Staff Housing Caretaker & Spa Experience Attendant". The tasks and responsibilities for the caretaker portion of the job are as follows:

- Read, understand, and model the expectations of employee behaviour detailed in the Employee Handbook of the [landlord], policies and procedures.

- Be visible, approachable, and accessible during staff housing caretaker scheduled shifts and associated duties.
- Serve as a positive role model for others at all times; behaving in a manner that exemplifies the values of our staff accommodation and valley housing, maintaining high standards of personal conduct, and understanding that intimate personal relations with Residents are unwise.
- Perform general caretaker services with respect to staff accommodation....
- Perform maintenance and cleaning of common areas and outdoor spaces....
- Complete light maintenance...
- Prepare rooms/suites for rent including cleaning oven, painting walls and other deep cleaning tasks and light maintenance.
- Ensure all common areas of staff housing remain clean and clutter free at all times
- Perform general caretaking duties with respect to the staff accommodation
- Supervise the residents of the on-site staff accommodation
- Attend all staff housing caretaker scheduled meetings...
- Attend all staff housing caretaker scheduled training sessions...
- Remain in the residence during staff housing caretaker scheduled shifts and/or while "on duty".

One of the pre-requisites for this position is a minimum of three years' experience as a building manager.

Counsel for the landlord testified that a job posting for the above position has been posted on multiple websites as well as in the local newspaper. Counsel for the landlord submitted that they are hoping to have the position filled by the end of the summer and in place before the busy winter season.

The tenant testified that he believes the landlord is acting in bad faith. The tenant testified that the landlord has previously tried to evict him for the same reason; however, through arbitration, the Notice to End Tenancy was cancelled because the landlord was seeking to evict him so that a front desk worker, and not a caretaker, could move into the subject rental property. The tenant provided the file number for the above dispute.

The tenant testified that the sole reason the landlord is attempting to evict him is because he is not an employee of the landlord. The tenant testified that given the seasonal nature of the landlord's employment, other staff rental units will become available before the end of summer and the landlord should choose one of those units to

convert to a caretaker suite. The tenant testified that the landlord is acting in bad faith because they have not yet hired anyone to fill the job posting.

Counsel for the landlord submitted that it is the landlord's prerogative to decide which unit they wish to convert to a caretaker suite and that the landlord has proved that they intend to convert the rental suite to a caretaker suite. Counsel for the landlord submitted that the landlord is aware of the serious consequences under section 51 of the *Act* if they do not use the subject rental property for the purpose stated on the Four Month Notice. Counsel for the landlord submitted that the landlord has met the onus to prove that the landlord is not acting in bad faith.

Analysis

Upon review of the Four Month Notice, I find that it complies with section 52 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. In this case, the onus is on the landlord.

Section 49(6)(e) of the *Act* states 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Policy Guideline 2 states that 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. If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find that the landlord has proved, on a balance of probabilities, that the landlord honestly intends to hire a caretaker and house the caretaker at the subject rental property. In making this finding, I have taken into account all of the evidence provided by both parties including the affidavit of the landlord's administrator, the job posting and the submissions of both parties. I find that the fact that the landlord has not hired a caretaker does not show any bad faith on the part of the landlord as it is reasonable to wait to hire the caretaker until the caretaker's accommodations have been arranged.

I find that the failed attempt to evict the tenant in the February of 2018 does not in and of itself prove that the landlord is acting in bad faith on this occasion. I find that on this occasion the landlord has proved its honesty of intention in hiring a caretaker.

While it may be true that other staff accommodation vacancies in the same building will become available between now and the end of the summer, I find that there is nothing in the *Act, Regulations* or the Residential Tenancy Policy Guidelines which prevents the landlord from choosing which unit will become the caretaker unit.

Counsel for the landlord confirmed that the landlord has chosen the tenant's unit as the caretaker unit because he is the only tenant in the landlord's staff housing who is not employed by the landlord. The tenant has alleged that this fact proves that the landlord is acting in bad faith. I find that the reason behind the landlord's selection does not qualify of bad faith. As mentioned above, there is nothing in the *Act, Regulations* or Residential Tenancy Policy Guidelines which prevents the landlord from making a selection that makes business sense. I find that the landlord's choice is not made in bad faith, but a practical business decision. I find that this decision is not an ulterior motive as stated in Residential Policy Guideline 2. I therefore dismiss the tenant's application to cancel the Four Month Notice.

Section 55 of the *Act* states that 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.

Since the Four Month Notice complies with section 52 of the *Act* and the tenant's application to cancel the Four Month Notice was dismissed, the landlord is entitled to an Order of Possession effective July 31, 2019 at 1:00 p.m., pursuant to section 55 of the *Act*.

As I have found that this tenancy will end on July 31, 2019, I decline to Order the landlord to allow access for the tenant or his guests. I also note that the tenant did not testify that access to the subject rental property was being restricted by the landlord.

Since the tenant was not successful in his application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on July 31, 2019**, which should be served on the tenant. Should the tenant 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: May 28, 2019

Residential Tenancy Branch