



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This teleconference hearing was scheduled in response to nine Tenant applications under the *Residential Tenancy Act* (the “Act”) which were joined to be heard together. The Tenants each applied to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Four Month Notice”), and for the recovery of the filing fee paid for each Application for Dispute Resolution.

The ten Tenants who occupy the nine rental units were present for the teleconference hearing (the “Tenants”), as were two advocates for the Tenants (the “Advocates”). The Tenants had a witness join during the hearing to present witness testimony and answer questions from both parties. An agent for the Landlord (the “Landlord”) was also present for the duration of the teleconference hearing.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Advocates confirmed that each Tenant had received a copy of the Landlord’s evidence package. Neither party brought up any issues regarding service.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions, call witnesses, and question the other party.

Preliminary Matters

The nine Four Month Notices were not submitted into evidence by either party. Although the Tenants indicated that the notices had been submitted with their applications, it did

not appear that the notices were included as evidence on any of the files. As such, I requested that both parties submit a copy of the notices by the end of the next day following the hearing.

The Landlord submitted a copy of the letter sent to the Tenants with the Four Month Notices, dated March 25, 2019, along with a copy of one of the notices, proof of service of the notices, and a copy of a right of first refusal form. The Tenants submitted a copy of each of the nine Four Month Notices following the hearing.

Both parties had further testimony and evidence to present when the hearing was concluded due to the time constraints for the scheduled hearing. The parties were notified that either a decision would be made, or, if it was determined that further information was required on this matter to make a decision, that the hearing would be adjourned and reconvened at a later date.

As a decision was made based on the testimony and evidence presented at the initial hearing, I do not find it necessary to have the hearing reconvened and instead the decision will be outlined below. As I find that both parties presented sufficient evidence on the findings discussed in the Analysis section of this decision, I do not find that concluding this matter without an adjournment unfairly prejudices either party.

Issues to be Decided

Should the Four Month Notices to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit be cancelled?

If the Four Month Notices are upheld, is the Landlord entitled to an Order of Possession for each of the rental units?

Should the Tenants be awarded the recovery of the filing fee paid for the Applications for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Landlord testified that the Four Month Notices were posted on the door of each rental unit on March 25, 2019. The Advocates confirmed receipt of the Four Month Notices on or around March 25, 2019.

The Advocates read the information on the Four Month Notices and stated that other than the Tenants' names and unit numbers, the notices contained the same information. The Four Month Notices were dated March 22, 2019 with an effective end of tenancy date of July 31, 2019. The following was stated on the notices as the reason for ending the tenancies:

I am ending your tenancy because I am going to:

- *Perform renovations or repairs that are so extensive that the rental unit must be vacant*

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

Further details of the intended work were provided on the notice as follows:

Replace/re-pipe all plumbing: Replacement of kitchen tiles, cabinet, and flooring; bathroom, fixtures and tiles; and re-pipe all plumbing in the building.

The Landlord submitted 44 pages of evidence. He provided testimony that the owner has plans to conduct extensive renovations and repairs in each of the nine units on the residential property. The Landlord stated that this includes re-plumbing the entire building due to the imminent risk of the plumbing system failing. The Landlord noted that the building was built in 1965. The Landlord also stated that the planned work includes redoing the kitchens and bathrooms in each unit, as well as the flooring. He also noted that due to the presence of asbestos, the work will involve asbestos abatement of which the extent is still unknown.

The Landlord testified that they have obtained a building permit, which was included in the Landlord's evidence package. The building permit is dated February 25, 2019 and was issued from the city. The building permit states the following:

Replacement of kitchen tiles, cabinet, and flooring; bathroom fixtures and tiles; and re-pipe all plumbing in this existing 3-storey multiple dwelling building containing 9 dwelling units.

The Landlord stated that to their knowledge, no further permits are required for the planned work. He stated that should additional work permits be required, they will obtain these as the work is completed.

The Landlord further stated that the extent of the asbestos is not yet known, but that the removal of the asbestos will be done in-line with the requirements. The Landlord submitted a report dated April 2, 2019 from an environmental consulting company. The report states in part the following:

A total of 3 samples were collected from the staircase on all three floors for the textured coating mud on the walls. Two out of the three samples were found to be asbestos containing.

A full inspection must be performed and samples collected as per Worksafe BC sampling guidelines before any abatement work can commence.

The Advocates questioned whether the required full inspection had been completed and the Landlord confirmed that this had not yet been done. The Advocates also questioned the area that the samples were taken from and asbestos found. The Landlord confirmed that the samples were taken from the common area staircases only and not from inside the rental units.

The Advocates made submissions on behalf of the Tenants. They stated the Tenants' position that while a building permit has been obtained, that a plumbing permit is also required and has not yet been obtained. The Tenants submitted approximately 65 pages of documentary evidence. Included in their evidence is a screenshot of a search of the city's website showing that the building permit is the only permit that has been obtained for this property.

The Tenants also submitted a letter from a licensed plumber dated May 15, 2019. This is the same plumber who attended the hearing as a witness. In the letter, the plumber states that he does not believe that vacant possession of the rental units is required to complete the re-piping work and replacement of bathroom fixtures. The letter also states in part the following:

It is also my opinion that the repiping work the landlord wants to do will require a plumbing permit from the [City].

The Landlord testified that the scope of work is expected to take approximately 4-9 months with no certainty as to the timeline due to the unexpected issues that may arise once the work has started. He stated that the owner feels that it is appropriate to complete the work with vacancy of the building to minimize the disturbance to the Tenants. He noted that when the building is vacant, they will be able to complete the work on the whole building at one time, and that it would be unsafe to complete the work with the Tenants remaining in the building.

The Advocates submitted that the units do not need to be vacant for the kitchen and bathroom renovations and may only need a short period of vacancy for the plumbing and asbestos work to be completed. They stated that the Tenants were willing to accommodate the repairs as necessary, without ending their tenancies. The Landlord confirmed that the Tenants were not asked if they were willing to vacate the property temporarily during the repairs.

The Landlord testified that the bathroom and kitchen renovations are not cosmetic and instead that the kitchens, bathrooms and floors will need to be torn down for the completion of the re-piping to occur. He noted that it is better to start the work and complete all at once due to the imminent risk of failure of the piping system. The Landlord stated that the Tenants were offered the right of first refusal to re-rent the units when the work is complete.

The witness for the Tenants, A.F., joined the hearing and answered questions from both parties. The witness stated that he is a journeyman plumber with 15 years experience. He confirmed that he visited the rental units and submitted the letter that was included in the Tenants' evidence package.

The witness stated that a plumbing permit is required for the re-piping work. He noted that a building permit is also required, but that once this is obtained a plumbing permit must be applied for underneath this building permit. He stated that a plumbing permit is a different permit all together.

The witness further testified that the re-piping work can be done without removing fixtures while still re-piping the entire building. The witness noted that there are options for completing this work with minimal disruption, such as running new risers beside the live water pipes and switching the water over after a brief shut off. He also noted that individual water shutoffs could be added, and one unit worked on at a time. The witness further stated that it would take 3-4 days maximum to complete the re-piping of the

bathrooms for a total of approximately one week for the full bathroom reconstruction work to be completed.

The witness stated that he is not involved in asbestos abatement but when there is asbestos present, this is completed prior to the plumbing work. He also noted that his one week estimate for completion of the bathroom does not include the time involved in dealing with any asbestos present as that occurs separately.

The Landlord stated his position that he understands the scope of the work required is disruptive, but that the Four Month Notices were issued in good faith as they require the building to be vacant for the work to be completed.

The Tenants' side stated their position that the proper building permits were not obtained prior to issuing the Four Month Notices, and that the tenancies do not need to end for this work to be completed.

Analysis

The Four Month Notices dated March 22, 2019 were served to the Tenants pursuant to Section 49(6) of the *Act* which states the following:

- (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;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the *Strata Property Act*;
 - (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
 - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
 - (f) convert the rental unit to a non-residential use.

As stated in Section 49(8)(b) of the *Act*, a tenant has 30 days in which to dispute a notice issued under Section 49(6). The Four Month Notices were posted on the Tenants' doors on March 25, 2019 and they applied to dispute the notices on April 17,

2019. Accordingly, I find that the Tenants applied within the time allowable under the Act.

Therefore, the matter before me is whether the Four Month Notices are valid. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the notice is valid.

The Four Month Notices state that the repairs/renovations being completed are so extensive that vacant possession is required, *and* that the necessary permits and approvals have been obtained. As such, I find that these are the two relevant matters before me and outline the tests that must be met in order to determine the validity of the notices.

Regarding the required permits, I refer to *Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property* which states the following:

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.

This policy guideline also states the following:

If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government.

Although the Landlord submitted a building permit, the Tenants questioned that this was the only permit submitted and stated that a further plumbing permit is also required. I found the testimony of the Tenants' witness to be particularly compelling in that the witness explained that although linked, both a building permit and plumbing permit are required for this type of work.

The Landlord provided testimony of their belief that only the building permit is required and that should any further permits be required they will be obtained as the work is

completed. However, I do not find this to meet the requirements of the policy guideline or meet the standard necessary for issuing a Four Month Notice. As stated, the necessary permits and approvals must be obtained prior to service of a Four Month Notice and it is not sufficient to obtain the permits later.

As stated, the Landlord has the burden of proof in this matter. The Tenants brought up questions regarding the absence of a plumbing permit and provided witness statement and testimony that a plumbing permit is required. In the absence of documentary evidence from the Landlord that would confirm that a plumbing permit is not required, I am not satisfied that the necessary permits and approvals were obtained prior to issuance of the Four Month Notices.

Accordingly, I find that the burden of proof was not met in establishing that the necessary permits and approvals required by law were obtained and that no further permits are needed.

The Tenants also testified as to their position that vacant possession of the rental units is not required for the planned work to be completed. However, as I have found that the Landlord did not establish that the required permits were obtained, I do not find it necessary to make further findings on the issue of vacant possession.

As such, based on my finding that the required permits have not been obtained and in the absence of evidence that only the building permit is required, I find that the Four Month Notices dated March 22, 2019 are not valid. Therefore, the notices are cancelled and of no force or effect. These nine tenancies continue until ended in accordance with the *Act*.

As the Tenants were successful with their applications, pursuant to Section 72 of the *Act*, I award the Tenants the recovery of the filing fee paid for each Application for Dispute Resolution. The Tenants for each of the nine tenancies may deduct \$100.00 from their next monthly rent payment as recovery of this fee.

Conclusion

The Four Month Notices dated March 22, 2019 are cancelled and of no force or effect. These tenancies continue until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may each deduct \$100.00 from their next monthly rent payment to recover the filing fee paid for each of the nine Applications for Dispute Resolution.

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: June 06, 2019

Residential Tenancy Branch