Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 25 SULLIVAN DEVELOPMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL-4M

Introduction

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

- more time to make an application to cancel the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 4 Month Notice pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that on May 6, 2019, they received the landlord's 4 Month Notice sent by the landlord by registered mail on May 2, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act* on May 6, 2019. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package and written evidence sent by the tenant by registered mail on June 17, 2019, I find that the landlord was duly served with this package in accordance with sections 88 and 89 of the *Act.* The landlord provided no written evidence for this hearing.

Issues(s) to be Decided

Should an extension of time be granted to the tenant to file their application for dispute resolution? Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, including copies of various Land Titles documents, Annual Report documents issued by BC Registry Services, municipal forms, documents and bylaws, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. I have also considered the decisions issued by previous arbitrators who considered applications related to a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued on February 13, 2019, and a January 10, 2019 decision relating to a previous 4 Month Notice issued by the landlord. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant gave undisputed sworn testimony that their tenancy with a previous owner of this dwelling began in 2001. The landlord's agent (the agent) gave undisputed sworn testimony that the landlord acquired this property in June 2016. Although the parties agreed that the monthly rent for this rental unit is supposed to be $500.00, the agent gave undisputed sworn testimony that no rent has been paid by the tenant since February 2018.

The issues relating to the non-payment of rent were addressed in part as follows in the April 15, 2019 decision by another arbitrator with respect to applications by both the tenant and the landlord with respect to the 10 Day Notice (see decision reference above):

...In this case, I find that the tenant sent his rent cheques for June to August 2018 to the address provided by the landlord in the landlord's letter dated May 31, 2018 by Canada Post registered mail. The tenant's rent cheques were returned unclaimed.

As such, I find it reasonable that the tenant withheld sending further rent cheques until the landlord provided the tenant with an address where the rent cheques would be received. In following the landlord's directions, the tenant incurred costs to send the cheques by registered mail and therefore, I find there is no expectation for the tenant to continue to send cheques and incur costs with no guarantee that the landlord would claim and accept those cheques.

I find that the landlord has a duty to conduct his business as a landlord with due diligence, which includes providing a means for the tenant to make his rent payments which will be assured of receipt by the landlord.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord failed to exercise reasonable diligence in providing a valid means by which the tenant could make rent payments. As such, I do not find that the tenant was required to make further attempts to send rent payments to the landlord after his rent cheques for June, July and August 2018 were returned unclaimed. Therefore, I do not find that the tenant owed rent for the months from October 2018 to February 2019.

As such, I find that the tenant was successful in disputing the landlord's 10 Day Notice dated February 13, 2019. The 10 Day Notice is cancelled and of no force and effect. The tenancy continues until ended in accordance with the Act.

Further, I find that the landlord has failed to meet the standard of proof in his claim for rental arrears owed from October 2018 to April 2019 as the landlord has failed to provide reliable means for the tenant to be able to make payment of rent. Therefore, the landlord's monetary claim for $3,500.00 is dismissed without leave to reapply.

I order that the tenant is not required to make rent payments until the landlord provides the tenant with a reliable address to where the tenant may send his rent payments with assurance that those payments will be collected and accepted. The landlord must send these instructions to the tenant in writing by Canada Post registered mail to ensure the tenant receives these instructions. The landlord is directed to use the tenant's address for service as provided on the tenant's Application for Dispute Resolution for this matter...

At the current hearing, the agent maintained that the landlord complied with the order issued in the April 15, 2019, with respect to the payment of rent by sending the tenant the landlord's address on two occasions, once by regular mail and once by registered mail. However, when asked for details regarding this provision of the address to the tenant, the agent said that the regular mailing occurred on May 31, 2018, and the registered mailing occurred on June 4, 2018. I noted that as both of these registered mailings occurred many months before the arbitrator issued their April 15, 2019, it seems clear that the landlord has failed to comply with that arbitrator's order.

While this information may be of relevance to the agent's claim that no rent has been paid towards this tenancy since February 2018, I reminded the parties that the issue properly before me is not whether rent is due, whether the landlord has complied with the arbitrator's order, or whether the tenant is entitled to any form of compensation after

having received the landlord's 4 Month Notice. Rather, the issue is whether the landlord's 4 Month Notice of May 2, 2019 issued for the following reason was valid and constituted a legal way of ending this tenancy:

I am ending your tenancy because I am going to:

- *demolish the rental unit*

In this regard, I note that the previous 4 Month Notice issued by the landlord on October 28, 2018 was set aside by the arbitrator who heard the tenant's application to cancel that notice on January 10, 2019 (see above). That decision referred to a demolition permit that was issued by the municipality on July 16, 2018, but which was not provided to the tenant in sufficient time before this hearing to be considered by the arbitrator.

Since the landlord's previous demolition permit had lapsed, the landlord applied to the municipality for an extension of time with respect to the previous permit to demolish this single unit dwelling. The tenant entered into written evidence a copy of that extension permit dated April 24, 2019. The agent and Landlord SG testified that this building and one next door, also owned by the landlord, were part of a redevelopment project that called for the conversion of these two properties situated on 3 1/2 acres into 25 unit single family homes. The agent testified that the landlord obtained an Order of Possession for the rental home on the adjacent property in 2018.

When asked to explain the circumstances surrounding the tenant missing the 30-day deadline for applying for dispute resolution, the tenant said that they filed their incomplete application three days before they submitted their income information for the purposes of obtaining a waiver of the filing fee for their application. In their amended application for dispute resolution, filed with the Residential Tenancy Branch (the RTB) on June 17, 2019, adding a request for more time to file their application, the tenant provided the following explanation of why they had missed the 30-day deadline for disputing the landlord's 4 Month Notice:

I provided proof of income 3 days after filing my application but unknown to me that the 3 days were added to the filing time.

The completed application was dated June7, 2019, two days after the expiration of the 30- day time period for applying to cancel the 4 Month Notice.

The remainder of the tenant's written submission and sworn testimony was somewhat difficult to follow. Many of the tenant's claims were directed at questions with respect to addresses provided by the landlord in the various applications for a demolition permit and in business records submitted to BC Registry Services, the Land Titles Office and the municipality. The tenant maintained that failures to identify unit numbers correctly in various corporate filings and names of others shown as having ownership interests in this property had some impact on the validity of the landlord's 4 Month Notice. Although it was not totally clear from the tenant's written evidence or sworn testimony, it appeared that the tenant had questions as to whether the landlord that issued the 4 Month Notice actually had the legal right of a landlord to do so. The tenant also questioned whether the $91.00 fee for obtaining an extension of the demolition permit, shown as "Outstanding" in the permit provided to the tenant had actually been paid by the landlord and by whom. Both the agent and Landlord SG gave sworn testimony that this fee had been paid to the municipality and that their demolition permit was in order.

Analysis

Section 49 of the *Act* reads in part as follows:

> *49 (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;...*
>
> *(8) A tenant may dispute...*
>
> *(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*
>
> *(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant*
>
> *(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
>
> *(b) must vacate the rental unit by that date...*

Section 66(1) of the *Act* enables me to grant an extension of time to the tenant to apply to cancel a 4 Month Notice in exceptional circumstances.

In this case, although the tenant submitted part of their application for dispute resolution to the RTB before the expiration of the 30 day time period for doing so, their application contained neither the required filing fee nor the information required to complete and confirm the tenant's application for a waiver of that fee until June 7, 2019. This completed application was received by the RTB, two days after the 30 day time period for filing an application to dispute the 4 Month Notice had expired. Although I have given the tenant's explanation that they did not realize that they needed to provide all of their information to complete their application within the required 30-day time period for doing so careful consideration, I see no exceptional circumstances in place that would warrant granting an extension of time to the tenant to complete the filing of their application for dispute resolution.

Under these circumstances and in accordance with section 49(9) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of this tenancy, in this case, September 30, 2019, and the tenant must vacate the premises by that time.

I would also add that even if I were to have granted an extension of time to the tenant to dispute the landlord's 4 Month Notice, I find that the tenant has failed to call into question the validity of the landlord's 4 Month Notice. The tenant's written evidence and sworn testimony did not effectively question the landlord's actual intentions in demolishing the rental unit where the tenant is residing. Rather, the tenant seemed to be under the impression that calling into question relatively insignificant portions of the ownership information the tenant had researched, including but not being limited to such items as obtaining complete and full mailing addresses for the landlord, proper unit descriptions and whether the application for an extension of time for the original demolition permit had actually been paid. It was unclear how these details and the tenant's research had any bearing on the real question as to whether the landlord genuinely intended in good faith to require the rental property for the purposes stated in the 4 Month Notice.

Residential Tenancy Policy Guideline 2 provides the following description of the burden of proof the landlord must meet when a tenant raises concerns about the extent to which the landlord has issued the 4 Month Notice in good faith:

...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...

There is little question that the landlord has tried on previous occasions to end this tenancy to demolish the rental unit and on the basis of non-payment of rent. As was noted above, the landlord was unsuccessful in obtaining an end to this tenancy for unpaid rent due to problems identified in the landlord's provision of an address where the tenant could pay their rent. The landlord's attempt to end this tenancy on the basis of a previous 4 Month Notice was unsuccessful because the landlord did not provide necessary information to the tenant in advance of the hearing of the tenant's application to cancel that 4 Month Notice. Since the previous application to demolish the rental dwelling had lapsed, the landlord needed to apply for and receive an extension of time for that original permit to demolish this residence.

The agent and Landlord SG gave convincing and undisputed sworn testimony that the existing residence where the tenant is living is scheduled for demolition and redevelopment as part of a plan to build 25 new single family homes on this property and the one adjacent to it. The tenant appears to have attempted to call into question whether the municipality applied its own bylaws properly and required the landlord to provide full and complete information within the application for an extension of the previously allowed permit to demolish this property. I see little evidence that anything the tenant provided calls into question the landlord's good faith intention to use this property for the purpose stated on the 4 Month Notice.

Section 49(7) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I am satisfied that the landlord's 4 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on September 30, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the 4 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on September 30, 2019. 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: July 29, 2019

Residential Tenancy Branch