Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TESSLER AND STEIN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, OLC

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated June 14, 2019 ("4 Month Notice"), pursuant to section 49(6); and
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 62.

The landlord's two agents, landlord MT ("landlord") and "landlord SW," the tenant, and the tenant's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager and landlord SW confirmed that she is the building manager, both employed by the landlord company named in this application and that both had authority to speak on its behalf at this hearing. The tenant confirmed that her lawyer had permission to speak on her behalf. This hearing lasted approximately 71 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's lawyer confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed receipt of the landlord's 4 Month Notice on June 18, 2019. The landlord confirmed that the 4 Month Notice was served to the tenant on June 14, 2019, by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 4 Month Notice on June 18, 2019.

During the hearing, the tenant did not reference or review her claim for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement. Accordingly, this portion of her application is dismissed without leave to reapply.

Issues to be Decided

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

Both parties agreed to the following facts. This tenancy began on December 1, 2015. Monthly rent in the amount of $1,067.00 is payable on the first day of each month. A security deposit of $495.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Both parties agreed that the landlord's 4 Month Notice, which states an effective move-out date of October 31, 2019, identified the following reason for seeking an end to this tenancy:

- *convert the rental unit for use by a caretaker, manager or superintendent of the residential property; and*
- *no permits and approvals are required by law to do this work.*

The landlord testified that landlord SW, who is the building manager for the rental building, lives with her husband in the building, where they have both been managers sharing duties for approximately 10 years. He maintained that landlord SW's husband

accepted a job with a construction company and no longer assists landlord SW with managerial duties in the rental building. He explained that landlord SW took over all managerial duties as much as she could, with help from the rental building cleaning person. He stated that landlord SW approached him, stating that she could not handle the managerial job on her own, that she needed help to clean, have another keyholder in the building, and another manager to act when she is on vacation or away working. The landlord said that he agreed to hire another manager to help landlord SW and that he has had an assistant manager in this building in the past, as well as in other buildings, particularly with 30 or more rental units.

The landlord maintained that he posted an advertisement for a new manager online, he was able to find one quickly, and the new manager was a reference from the landlord's manager in another building. He said that the new manager has experience, was interviewed, and hired. The landlord testified that he received the new manager's resume, dated June 11, 2019, the landlord sent an email offering the position to the new manager, the new manager verbally accepted the position on June 24, 2019, she accepted the position by email on June 27, 2019, and she signed an employment contract with the landlord on July 1, 2019. The landlord provided copies of the above documents, as well as a posted advertisement, dated June 13, 2019, for the new manager position. He maintained that the new manager is to begin her position by December 1, 2019, and that he requires time to clean and paint the tenant's rental unit because the tenant is a smoker and the new manager is a non-smoker.

The landlord stated that he looked for a rental unit for this new manager to live in the rental building. He said that landlord SW currently lives in a unit of the building that faces the front main door. He explained that he wanted a rental unit facing a different direction, in an area where there are problems, so the new manager can deal with it. He maintained that he selected the tenant's rental unit, because it faces the alleyway where there are problems, "unsavory" activity, garbage bins, the garden, rear door, and underground. He noted that the tenant's rental unit is a small bachelor suite, which is the least expensive unit in the building, and would be ideal for the new manager who is a single woman living alone.

Landlord SW testified that she is the building manager for the rental building and that her husband used to assist her with managerial duties at the rental building until he obtained a job with a construction company, so he no longer helps her. She confirmed that she approached the landlord for assistance with her duties once her husband stopped helping her. She noted that her office is located approximately five minutes

away from the rental building but that she took over duties in another building in a different city, so she cannot come back to the rental building on short notice, if required. She said that she needs a manager to be located on-site at the rental building.

The tenant's lawyer stated that there is no evidence that landlord SW's husband got another job, as the testimony of the landlord and landlord SW is hearsay. During the hearing, the landlord offered to provide the tenant's lawyer with the contact information for landlord SW's husband to be contacted to confirm any details. The tenant's lawyer maintained that landlord SW did not show up to this hearing to testify, nor was any documentation provided for same. He confirmed that the tenant did not have an issue with the landlord obtaining a caretaker for the rental building, as he said it was the landlord's right to do so, but that the landlord was not acting in good faith and was attempting to get rid of the tenant for other reasons.

The tenant's lawyer stated that there were a number of previous Residential Tenancy Branch ("RTB") hearings, where the landlord was unsuccessful in getting rid of the tenant. The landlord disputed this, stating that there were only two previous RTB hearings, due to the tenant's two applications, one of which he said was dismissed even on review. The tenant's lawyer referenced a hearing in November 2018, when the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice") was dismissed and the landlord was unable to obtain an order of possession against the tenant. The landlord indicated that this hearing occurred almost a year ago and the landlord was required to follow up on complaints from other tenants, in order to fulfill the landlord's duties. The tenant's lawyer pointed to photographs, provided in the tenant's evidence package, which show the view from the tenant's deck, to a garden below. He stated that the tenant had a conflict with landlord SW about the garden, at another previous RTB hearing. The landlord confirmed that the tenant was unsuccessful in this other hearing regarding her complaint about landlord SW using the garden that is visible from the tenant's balcony.

The tenant's lawyer maintained that landlord SW's memo in March 2019, about requiring assistance, does not indicate whether it was sent, as the landlord did not respond to it in writing. The landlord stated that he was on vacation at the time that the memo was sent and when he returned, he preferred to speak to landlord SW in person, rather than in writing. The tenant's lawyer said that there were no other emails or text messages from landlord SW stating that she was overworked. He explained that the advertisement for the new manager position was posted on June 13, 2019, two days after the new manager provided a resume to the landlord for the position. He

questioned why the landlord posted the advertisement if he had found the "perfect" candidate. The landlord stated that the new manager did not respond to this advertisement, as she was recommended privately through another manager. He said that he still posted the advertisement because he had not yet interviewed the new manager at that time, and he wanted to keep his options open. He also noted the 94-day time gap between landlord SW's request for help on March 11, 2019 and the landlord's advertisement asking for a new manager on June 13, 2019. He said that the new manager accepted the position only four to five days after the job was advertised.

The tenant's lawyer stated that the landlord redacted the name and email information of the new manager so that the tenant's lawyer was unable to contact her. He maintained that he did not request this information from the landlord or request a summons for the new manager to attend this hearing to be cross-examined because he was retained only recently before the hearing. The landlord stated that he redacted the information from the tenant's copy because he did not think he could disclose personal, confidential information about the new manager, due to privacy laws. He said that he did not know that the tenant required this information, as neither the tenant, nor her lawyer, requested it from him, so he did not know there was an issue.

The tenant's lawyer noted that there are only 34 units in the rental building, including landlord SW's unit. He questioned why the tenant's rental unit was selected for the new manager, when another unit became available in April 2019 and it was re-rented to another third party, and a further unit became available in June 2019 on the ground floor of the building. The landlord noted that no bachelor units were available after April 2019, and the only unit that became available since June 2019, was a one-bedroom unit, which is the biggest one-bedroom unit facing the front of the building, which is the same direction as landlord SW's unit. The tenant's lawyer explained that there is a cleaning service in the building, so the landlord did not require another caretaker. The landlord disputed that the new manager position was only for cleaning, as he noted the person would be a keyholder and manager when landlord SW is away.

Analysis

According to subsection 49(8)(b) of the *Act*, a tenant may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after the date the tenant received the notice. The tenant received the 4 Month Notice on June 18, 2019 and filed her application to dispute it on June 28, 2019. Therefore, the tenant is within the 30-day

time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 4 Month Notice.

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

I accept the landlord's and landlord SW's testimony that they require another manager to move into the rental unit to assist with managing the rental building, including keyholding and cleaning duties, among other tasks. The landlord provided a memo, dated March 11, 2019, from landlord SW, indicating that she requires assistance with her managerial duties at the rental building. Landlord SW confirmed this information, by way of her testimony, during the hearing.

I accept the landlord's and landlord's SW's testimony regarding the managerial position that was offered to the successful candidate. The landlord provided the resume, dated June 11, 2019, the email acceptance, dated June 27, 2019, and the employment contract, dated July 1, 2019, for the successful candidate of the new manager position. I place limited weight on the above documentary evidence, given that the contact information of the new manager was redacted from the tenant's copy but not my copy at the RTB. I accept the affirmed testimony of both the landlord and landlord SW regarding the details of the hiring as noted above, as they both confirmed this information during the hearing.

I note that the tenant's lawyer raised an issue regarding the name and contact information of the new manager being redacted from the tenant's copy of the above documents. I accept the landlord's explanation that he redacted the information, due to privacy issues and the fear of breaching confidentiality of the new manager's personal information. I find that neither the tenant, nor her lawyer, attempted to ask for or obtain this contact information from the landlord either before or during the hearing. Since the tenant raised an issue regarding the redaction, she did not notify the landlord that this was an issue. I also find that neither the tenant, nor her lawyer, requested a summons before or even at the hearing, for the new manager or landlord SW's husband to attend the hearing to be cross-examined, as per Rules 5.3 and 5.4 of the RTB *Rules of Procedure*. This is despite the fact that I raised the summons issue during the hearing and even then, no request was made by the tenant or her lawyer even during the hearing. I further note that neither the tenant, nor her lawyer, requested an adjournment of this hearing in order to obtain this information, contact the new manager or landlord

SW's husband, or request a summons. However, as noted above, I have placed limited weight on the documents, and greater weight on the testimony of the landlord and landlord SW, due to the redaction.

I note that the tenant's lawyer confirmed during the hearing that the landlord had a right to hire a caretaker for the rental building and that was not the issue, it was the good faith intention of the landlord that was being questioned by the tenant.

I accept the landlord's and landlord SW's testimony that the tenant's rental unit is the lease expensive bachelor unit in the rental building, which overlooks an area of the property where there are problems and requires management assistance. I find that the landlord is attempting to minimize its business costs by using the least expensive unit in the building, to maximize the rent that can be obtained from the other units in the building. Therefore, I find that although the tenant indicated that one other unit became available in the rental building in June 2019, this was the largest one-bedroom unit in the rental building, that obtains more rent than the tenant's rental unit. The other unit from April 2019, also obtains more rent than the tenant's unit.

I find that the landlord established good faith intentions, regarding the 4 Month Notice that was issued to the tenant.

Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, states the following, in part:

> *In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*
>
> *Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).*

Although there were two previous RTB hearings, both brought by the tenant, I find that this does not demonstrate ulterior motives or a lack of good faith on the part of the landlord. The first hearing referenced by the parties was on November 29, 2018, after which a decision was made by a different Arbitrator on December 5, 2018, cancelling the landlord's 1 Month Notice regarding several complaints about the tenant. The file number for that hearing appears on the front page of this decision. I find that this hearing was far removed from the current hearing on August 23, 2019, as it was almost nine months prior. I accept the landlord's testimony that he was required, in his landlord duties, to act on complaints from other tenants in the rental building, regarding the tenant.

The second hearing referenced by the parties was on April 8, 2016, after which a decision of April 16, 2019 was made by a different Arbitrator, dismissing the tenant's entire application, except for leave to reapply for a monetary order in the future. The file number for that hearing appears on the front page of this decision. In that decision, the Arbitrator found that there was no harassment of the tenant by landlord SW, nor was there a breach of the tenant's quiet enjoyment. The Arbitrator did not make an order for the tenant's requested repairs, did not authorize the tenant to change the locks to the unit, and did not to suspend the landlord's right to enter the tenant's rental unit.

I also find that there was no unreasonable "delay" in the timeline of the landlord's search for the new manager, as alleged by the tenant's lawyer. I accept the landlord's testimony that he was informed by landlord SW that she required assistance with her managerial duties, that he spoke with her in person after returning from vacation, that he posted an advertisement, and he received a resume and reference for the new manager from another manager in a different rental building. I accept the landlord's testimony and I find it reasonable that he wanted to post an advertisement for a manager, despite already having the resume of the new manager, because he wanted to explore all of his options before hiring someone.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends, in good faith, to convert the rental unit for use by a manager of the residential property. I find that the landlord has met its onus of proof under section 49(6)(e) of the *Act*.

Accordingly, I dismiss the tenant's application to cancel the 4 Month Notice. I uphold the landlord's 4 Month Notice, dated June 14, 2019. I grant an order of possession to the landlord effective at 1:00 p.m. on October 31, 2019, the effective date of the 4 Month Notice.

Conclusion

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

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on October 31, 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: August 26, 2019

Residential Tenancy Branch