



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Four Month Notice to End Tenancy for Landlord's Use for Renovations or Repairs of Rental Unit dated July 29, 2019 ("Four Month Notice"), for a monetary claim of \$200.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their \$100.00 Application filing fee.

The Landlord, the Tenants and the Tenants' advocate, S.C. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In the Application, the Landlord is identified as an individual and a company; however, since the corporation identified on the Application was not a Party to the tenancy agreement, I have amended the Respondent's name in the Application to include only the Landlord's name, D.T., as identified in the tenancy agreement pursuant to section 64(3)(c) and Rule 4.2.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the

hearing. Further, I advised the Parties that pursuant to Rule 2.3, I am authorized to dismiss unrelated disputes contained in the Application. In this circumstance the Tenants applied for different matters of dispute, the most urgent of which is the application to set aside the Four Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the Four Month Notice and the recovery of the Application filing fee at this proceeding. Therefore, the Tenants' other claim is dismissed with leave to re-apply.

Issue(s) to be Decided

- Should the Four Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began for Tenant, A.M., over ten years ago, prior to the current Landlord buying the residential property in 2016. The current tenancy agreement between the Parties began on April 1, 2018, with a monthly rent of \$829.00, due on the first day of each month. The Parties agreed that the current rent for the rental unit is \$862.00. The Parties agreed that the Tenants did not pay a security or pet damage deposit to any landlord.

The Landlord served the Tenants with a 3-page, Four Month Notice dated July 29, 2019, which is RTB form number 29. The Four Month Notice is signed, has the rental unit address, and states the effective vacancy date of December 1, 2019. The second page of the Four Month Notice has a list of the grounds for ending the tenancy, none of which is checked off. However, in a box entitled "Details of Work" it states:

The building will be undergoing extensive renovations to update the building and repair damage due to a flood that occurred in the building.

The Landlord also checked a box on page two of the Four Month Notice stating that "No permits and approvals are required by law to do this work."

In answer to my question: "Why did you issue the Four Month Notice?" the Landlord said: "For renovations due to a flood in the rest of the building and surrounding units. [A.M.] claims there's no damage to his unit, but regardless, it's for renovations."

In written submissions, the Landlord said:

In Dec 2018, we had snow and ice plug the roof drains and flood the interior walls of our building at [rental unit address]. We immediately informed our insurance company and were contacted by our insurance adjuster. [S.M.] was hired to do the original assessment and any subsequent work.

The damage to Units #1,3 and 4 was extensive, and given that so much demolition needed to be done to ensure the integrity of the building, Service requested that all units be vacated for an undetermined period of time. Health and safety were top of mind for us in this unfortunate scenario. Attached are all emails we have received regarding the building from both the adjuster and the restoration contractor (hired by the insurance company) to do the work.

In the hearing, the Tenant noted the Landlord's evidence from an insurance adjuster, a restoration contractor, and a City inspector. The Tenant said the latter was a generalized letter that just addresses permits, rather than whether vacant possession is needed. The Tenant said: "If I'm not correct - seeking clarification from the Landlord – which pages clearly indicate the presence of hazardous materials that would require the tenants to vacate immediately?"

The Landlord said that there was a Hazardous Materials Survey ("Haz Mat Report") done, which states that because of the age of the building there are dangerous materials in the plaster and the flooring, and it needs to be vacant for renovations. The Landlord said it is a dangerous place to live.

The Haz Mat Report described the purpose of the survey as follows:

The purpose of this hazardous materials survey was to identify which materials, if any, contain asbestos and or other hazardous materials. This report includes a list of building materials that are confirmed or suspected of containing hazardous materials.

The Haz Mat Report set out the scope of their work, as follows:

2.0 Scope of Work

We attended the site on September 6th, 2019. The scope of work was limited to:

A visual inspection of the building for the presence of hazardous substances, including (but not limited to) asbestos containing materials (ACM), arsenic, lead based paints (LBP), lead containing products, radioactive materials, mould, rodent droppings and other sources of biological hazards, mercury, polychlorinated biphenyls (PCBs), ozone depleting substances (ODS), petroleum and controlled products; - Bulk sampling and analysis of suspected ACM and LBP for the presence of asbestos and lead, respectively; and - Make recommendations for further actions to take place prior to continued renovation.

The Client originally attended the property in order to remediate building materials that have been affected by water ingress, due to a roof leak. Removal of materials is underway in the building. This hazardous materials survey is non-invasive, and accounts for all hazards that may be present, and may not have been considered prior to

commencing work.

It should be noted that no access was granted to units 2 and 3 of the building during this visit. [one of which is the Tenants' rental unit]

The Landlord pointed to an email with a recommendation from the Restoration Contractor, which states:

Hi [Landlord],

In follow up to my previous emails about the extent of damage, here is an outline of the work procedures for the remediation to each unit.

Each unit will consist of major demolition during the emergency procedures to uncover the extent of the damage. During our initial inspection, our thermal imaging camera indicated what we had thought to be a relatively minor water loss that was spread out through sporadic areas. Once we started opening the drywall, the extent of water damage was much larger of a foot print than originally suspected. Once we opened the drywall to the exterior walls, it was obvious the damage continued wall to wall, which also will require the ceiling materials to be removed. The areas inspected to date only include the upper level and will be required to continue to the lower affected areas. The work scope will include all exterior walls to the front and back of the building, as well as the two outside side walls. Ultimately, all 4 sides of the building, top to bottom.

With the scope being as large as it is and the amount of time that has passed, I would suggest **having all units empty during these repairs.** This will prevent secondary damages, health/safety concerns and any issues with the work being performed. We will require full access to all units, Monday through Friday, 8am-430pm. We will also require power to the complex, including lights & heat.

Estimated time per unit during emergency services is 10 days, once started.

Estimated time per unit during rebuild services 45 days, once started.

[P.C.]

[Restoration Contractor name]

[emphasis added]

The Parties agreed that the Tenants did not allow the Restoration Contractor's staff access to the rental unit during the inspection of the residential property for the Haz Mat Survey. The Tenant said that the Landlord did not give him written notice of the intended entry, which the Act requires a landlord to do, including stating the purpose for entry and the date and time of the entry. The Landlord said that he called the Tenants two days prior to the inspection, but he did

not indicate having provided written notice with the required information, pursuant to section 29 of the Act.

The Landlord said that the Haz Mat Report was for units 1 and 4, which he said were built at the same time as the Tenants' rental unit with the same materials, the same plaster, which he said is the concern.

The Tenants submitted a copy of an inspection report they had prepared by another home inspection company ("Inspection"). The Inspection states that the Tenants requested a moisture inspection be done "...with regards to testing areas that a remediation company marked with green tape in the floor of his rental unit."

The Inspection states: "[The Tenant] explained the building had water leaks into some of the units due to roof issues, and the remediation company marked areas with green tape in his unit and said those areas had water behind the walls."

The Inspection included the following statement:

In conclusion, areas marked by the remediation company did not show signs of water ingress; instead the areas tested have metal lath behind them and the conductivity of this material can alter the readings on a moisture meter making areas of the wall record as possible wet areas.

...

All other additional testing would require invasive testing and removal of sections of the wall finishings. The inspector arrived onsite with an infrared camera, moisture meter and visual camera.

The Landlord submitted an email he received from a City Building Inspector, which states that the scope of the work described by the Landlord in a prior email "...would not constitute a requirement to have a Building Permit issued from us. ..."

The Advocate referred to RTB Policy Guideline #2B ("PG #2B"), which cites: *Allman v. Amacon Property Management Services Inc.* 2006 BCSC 725. As stated in PG #2B:

The BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the 'nature and extent' of the renovations or repairs require the rental unit to be vacant.

The Landlord submitted the following email message from the Restoration Contractor:

Please see attached images for the water damage that was exposed during our investigation. As you can see by the amount of water discovered, we will

need full access to both the front and rear of the complex exterior walls in each four units on both upper and lower levels. **We will need work areas clear of all content.** I would suspect each upper floor will take (2) days of demo & 4-6 days of drying after, in all 4 units. The lower levels will take approx. 4-6 days of demo, 4-6 days of drying after, in all 4 units. Unit 1 & 4 may require additional work to the left & right side of the exterior walls, as there was detected moisture readings to the exterior walls. (bottom of stairs)

As we attempted to work around the tenants living arrangements, we were met with challenges. In order for us to proceed with our demo and emergency procedures, we will need these conditions meet before moving forward.

[emphasis added]

Further, the Haz Mat Report indicated that the following materials are present in the residential property:

- Mercury,
- Crystalline Silica
- PCBs
- ODSs

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 49(6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Where a tenant applies to dispute a Four Month Notice, the onus is on the landlord to prove on a balance of probabilities the reasons on which the Four Month Notice is based.

In this case, the Tenants argue that the Landlord does not require vacant possession of the rental unit. The Landlord argued that vacant possession is required to perform the listed renovations/repairs of the residential property, and because of health and safety concerns for tenants.

The Tenants' Inspection investigated moisture in the rental unit. The Haz Mat Report investigated hazards that may be present in the residential property before further remediation work is started. Further, when the Restoration Contractor opened the drywall, they found more

extensive water damage than originally thought (or found by the Inspection). I find that the Inspection was limited to a superficial detection of moisture in the walls of the rental unit; it did not attempt to analyze the hazardous materials that may be contained in the building materials.

PG #2B states:

Renovations or repairs objectively and reasonably requiring vacant possession

Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will:

- make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or
- result in the prolonged loss of an essential service or facility (e.g., the electrical service to the rental unit must be severed for several weeks).

Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time. As long as the tenant provides the landlord with the necessary access to carry out the renovations or repairs, then the tenancy does not need to end. Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing sinks, backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

Appendix A states:

<u>Type of Renovation or Repair</u>	<u>Disruption to tenants</u>	<u>Requires Vacancy?</u>
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy

I appreciate that the Haz Mat Report did not include reference to the Tenants' rental unit, since the Tenants did not allow the Restoration Contractor access; however, I find the conclusion that the whole building was made of the same materials to be persuasive in concluding that the rental unit would have the same hazards as those found elsewhere in the rest of the building.

Again, the Restoration Contractor said:

As you can see by the amount of water discovered, we will need full access to both the front and rear of the complex exterior walls in each four units on both upper and lower levels. We will need work areas clear of all content.

I find this is consistent with PG #2B regarding the type of repair/renovations that requires vacant possession.

Based on the evidence before me, overall, I find that the Landlord provided sufficient evidence that the renovations require vacant possession of the rental unit, which substantiates the Four Month Notice. I find the Four Month Notice is consistent with section 52 of the Act regarding the required form and content. Accordingly, I find the Four Month Notice is valid. I award the Landlord an order of possession of the rental unit, pursuant to section 55 of the Act. The effective vacancy date is December 1, 2019 at 1 p.m., in accordance with the Four Month Notice.

The Tenants were unsuccessful, so I do not award them recovery of the \$100.00 Application filing fee. I dismiss their monetary claim with leave to reapply. This Decision does not affect any application deadlines.

Conclusion

The Tenants are unsuccessful with their Application to cancel the Four Month Notice. I found that the Landlord's Four Month Notice was valid.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on December 1, 2019 at 1:00 p.m. **after service of this Order** on the Tenants.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 31, 2019

Residential Tenancy Branch