



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FF

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition of the property (the 4 Month Notice) pursuant to section 49;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord via Xpress Post on November 26, 2019 with the notice of hearing package and the submitted documentary evidence. The landlord stated that the tenant was served with the landlord's submitted documentary evidence in person to an adult at the rental property. The tenant disputed this claim stating that no documentary evidence has been received by the tenant from the landlord. The landlord was not able to provide any supporting evidence of service.

I accept the affirmed testimony of both parties and find that both parties have been sufficiently served with the tenant's notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

As for the landlord's documentary evidence, the tenant has argued that at no time was a documentary evidence package received from the landlord. The landlord stated that it was served to an adult person at the residence and was unable to provide any proof of service. On this basis, I find on a balance of probabilities that the landlord failed to serve the tenant with the submitted documentary evidence. The landlord's documentary evidence package is excluded from consideration in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 4 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the tenant rents a room in the basement and shares a common bathroom with other residents. Neither party submitted a copy of the signed tenancy agreement.

Both parties confirmed the landlord served the tenant with a 4 month notice to end tenancy issued for demolition, renovation, repair or conversion of a rental unit dated October 28, 2019. In this case, both parties confirmed it was for demolition. The stated effective end of tenancy date is February 25, 2020 and the details for the reason selected is:

Demolish the rental unit.

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

2019/08/22	City of Vancouver	Salvage and Abatement Permit	BP-2019-02969
2019/10/03	City of Vancouver	Sewer and Water Permit	SW-2019-00439

The tenant has submitted copies of the above noted permits issued by the city.

The tenant argues that the landlord does not have all the necessary permits. The tenant refers to the Salvage and Abatement Permit dated August 22, 2019 which specifically states, "This permit does not authorize demolition, deconstruction or construction work." The tenant has argued that a demolition permit is required for the landlord to issue the 4 month notice dated October 28, 2019.

The landlord disputes the tenant's argument stating that a Salvage and Abatement Permit was issued dated August 22, 2019. The landlord states that a Demolition Permit will not be issued by the city until the abatement is completed. The landlord in direct

testimony referred to the “Building Permit” for Salvage and Abatement dated August 22, 2019 on page two which states in part,

*A Hazardous Materials Inspection Report, Post Abatement Inspection Report and the City’s 2015 Hazardous Materials Report form must be submitted to and accepted by Environment Protection upon completion of work, **prior to issuance of a demolition permit.***

The tenant reargued that a demolition permit is required for the landlord to issue the 4 months notice to end tenancy.

Analysis

Section 49 (6) of the Act sets out 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 demolish, renovate or repair the rental unit that requires the rental unit to be vacant.

Where a tenant applies to dispute a 4 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 4 Month Notice is based. The tenant has argued that the landlord has not in good faith issued the notice.

In this case, the tenant has argued that because the landlord has not been issued a demolition permit, the landlord’s notice was issued in bad faith. Both parties have confirmed that the landlord was issued a Salvage and Abatement Permit by the city. The landlord has provided undisputed direct testimony that a Demolition Permit will not be issued until Salvage and Abatement are completed to the satisfaction of the city.

I find on a balance of probabilities that I accept the affirmed testimony of the landlord that a demolition permit will not be issued by the city until the Salvage and Abatement process has been completed to the city’s satisfaction. I also note that it is reasonable in the circumstances that Salvage and Abatement of the rental would require vacant possession and that there is no apparent bad faith of the landlord for this notice. As such, the tenant’s application to cancel the 4 month notice is dismissed. The 4 month notice dated October 28, 2019 is upheld. The landlord is granted an order of possession for the effective end of tenancy date of February 28, 2020.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

The order of possession must be served upon the tenant. Should the tenant fail to comply with the order, the 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: January 16, 2020

Residential Tenancy Branch