Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M LAT LRE OLC**

Introduction

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

- An order to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice") pursuant to section 49;
- An order to change the locks to the rental unit pursuant to section 31;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the landlord and the tenant YM attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution however disputes that the tenant provided him with evidence within the time frame allowed by the Residential Tenancy Branch Rules of Procedure. The tenant acknowledges receiving the landlord's evidence.

The tenant testified she provided the landlord with her documentary evidence on January 10, 2020, eleven days before the hearing date. The evidence consisted of 20 photographs of car damage (not part of the tenant's claim), 7 photos of home improvements (not claimed), text messages regarding settlement, and the tenant's written submissions. The landlord objected to the admission of the tenant's documents as he was denied the opportunity to thoroughly review the document and because they were not exchanged in accordance with Rule 3.14 of the Rules which state:

> *Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.*

I confirmed that the tenant's evidence was not provided to the Residential Tenancy Branch or to the respondent/landlord within the timeframe permitted by Rule 3.14 and subsequently determined that the tenant's documentary evidence would be excluded from my decision. The tenant's oral testimony would be accepted.

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's Notice to end tenancy was unrelated to the tenants' other issues and dismissed the tenant's other issues with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

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

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence that was admitted, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties advised that there was a previous hearing held before a different arbitrator of the Residential Tenancy Branch who determined a previous four month notice to end tenancy would not be upheld. The previous case number is listed on the cover page of this decision.

The landlord provided the following testimony. The rental unit is an entire house, built in 1935, situated on a large, sub-dividable lot. The landlord has obtained a Preliminary Layout Assessment ("PLA") from the city allowing him to divide the lot into two lots with separate titles. In order for the project to go ahead, the landlord requires the rental unit to be demolished and before that can happen the tenants must vacate it. The city will not provide the requisite permits to demolish the house while the house remains occupied.

In evidence, the landlord provided the following pieces of evidence.

An email from the city dated August 15, 2019 which states:
Prior to a demo permit being issued, the services on site must be capped. I have checked with the Engineering Dept. and the best approach is as per below:

- Water meter to be removed by CS forces at a cost of $75, or the owner can retain use of the water service for construction if the lateral is severed 1 meter inside the property with a standpipe and air vacuum breaker on a hose bib securely fastened to a wooden post. Inspection through a $50 plumbing permit.
- Sewer and storm connections are fitted with inspection chambers so it would be best to cap them 1 meter inside the property, by contractor, inspected through a $50 plumbing permit. (All three can be combined on same plumbing permit)

A demo permit is applied for on the same application as a building permit (attached). Along with the completed application we will need:

- a title search (obtained within the last 30 days)
- 3 copies of a site plan of the property - showing what is on the property and what is to be removed
- Plan review fee
- Clearance letter regarding removal of hazardous materials on site (asbestos for example)

When the capping of services has been inspected, we are in a position to issue the permit. You would pay the balance of the permit, including a surety that you do not damage municipal infrastructure during the demolition. Please call me if you need any further information or want an exact breakdown on plan review or permit issuance fees.

On October 30, 2019, an arbitrator of the Residential Tenancy Branch determined the landlord provided insufficient evidence to support a finding that permits and approvals for the demolition are *not* required by law. At that hearing, the landlord did not submit proof of any permits, plans, or approvals regarding the demolition or provide the arbitrator with any documentary evidence from the municipality in which the rental property was located, or a confirmation from a certified tradesperson, to support such claims.

The landlord contacted the city on October 29th, advising them:

> *Clearly, we are in a "Catch-22"; we can't achieve a formal Permit without cutting off essential services in order to engineer and install new services in accordance with the PLA; we can't cut-off services as the property is tenanted; and, we can't evict the tenant without a Permit or documentation from [city]*

In the same email, the landlord asks the landlord for a letter stating specifically:

> *In order to proceed further and acquire a Permit, they must first achieve vacant-possession of the property such that (a) essential services can be severed; (b) existing structures can be removed, and (c) new services can be engineered and installed".*

On October 31, 2019, the city provided him with a letter that states:

The District of [city name withheld for privacy] has issued a Preliminary Layout Assessment (PLA) letter to you, dated September 11th, 2019. The PLA outlines what is necessary in order to complete the subdivision of the subject property into two lots with separate titles.
In order to proceed with the subdivision of the subject property, the existing dwelling will require removal. This will require the services to the existing dwelling to be disconnected.

Neither party called the author of the letter as a witness in this proceeding.

On October 31, 2019, the landlord had the tenant personally served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice"). The landlord testified that attached to the Notice was the letter dated October 31, 2019 from the city. Although the parties dispute the method of service and despite her application stating she received the Notice on October 29ththe tenant acknowledges receiving the Notice on October 31, 2019. The tenant filed to dispute the Notice on November 29, 2019.

The Notice indicates an effective (move-out) date of February 28, 2020. The reason for ending the tenancy indicates it's because the landlord is going to demolish the rental unit (see attachment). The Notice does not indicate whether the landlord has obtained all permits and approvals required by law to do the work. Instead, where permit information is supposed to be filled in, the landlord has written (see attachment). The landlord also left the spot where he would indicate no permits and approvals are required by law to do the work as blank. I note that there is no spot on the form to indicate permits and approvals cannot be obtained while the unit is occupied. Lastly, the spot where the landlord is to indicate the work he is planning to do is left blank.

The landlord testified that the "capping of services" could not be done while the house was occupied. On November 18th the landlord emailed the city whether the "capping" of the water, sewer and storm connections could be done while enabling continued access to the services by the tenants still occupying the home. The city engineer responded the same day indicating temporary arrangements of water servicing using a "hose bib" and "vacuum breaker" will not meet plumbing code for an occupied residence however suggested installing an inspection chamber in advance of capping. This would require excavating twice and would be an added expense.

The landlord also testified that he is aware that if the planned demolition of the rental unit does not happen, he is liable to pay the equivalent of twelve months rent back to the tenant. He also testified that rent for the month of February will not be collected in accordance with the *Act* that requires this reimbursement to the tenant.

The tenant provided the following testimony. The landlord failed to show permits weren't required at the previous hearing and today. Turning to the city's letter dated October 31st, the tenant suggests that nowhere in the letter does it state that no permits are required. The letter refers to a PLA letter, which *outlines what is necessary in order to complete the subdivision of the subject property into two lots with separate titles,* however that PLA letter was not provided to her to clarify the requirements. The tenant understands the landlord cannot disconnect her services without permits and she will not leave unless the landlord obtains an order of possession.

Analysis

The parties agree the tenant was served with the Notice on October 31, 2019 and filed an application to dispute the Notice on November 29, 2019. I find the tenant filed to dispute the notice within the 30 days required pursuant to section 49(8)(b) of the *Act*. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the tenancy should end for the reasons indicated on the Notice.

Residential Tenancy Policy Guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] states:

> When ending a tenancy under section 49(6) of the RTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals. The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued. "Permits and approvals required by law" can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose.
> …
> **If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.**
>
> If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy. **Some**

> **local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.**

In the case before me, I find the email dated August 15, 2019 to be compelling evidence of conditions that must be met prior to obtaining permits. Specifically, I note the following sentences: **Prior to a demo permit being issued, the services on site must be capped**… **When the capping of services has been inspected, we are in a position to issue the permit.**

The letter from the city dated October 31, 2019 refers to a PLA letter dated September 11, 2019 that *outlines what is necessary in order to complete the subdivision of the subject property into two lots with separate titles.* Although the landlord did not provide that letter to the tenant and did not provide that letter to me in his evidence package, I find the evidence from the August 15th letter is compelling enough to convince me that the only requirement to be fulfilled before granting the demolition permit is capping of services.

I look to the landlord's correspondence with the city on November 18th as evidence of the landlord attempting to allow the tenants to remain in the rental unit while trying to fulfill the city's requirement of capping services. I find the city's response does not provide such a remedy. It is clear to me that the landlord requires vacant possession of the house before the services to the house can be capped and that the tenants cannot remain occupying the house while the water or sewer facilities have been discontinued. I am satisfied the landlord has completed all steps possible prior to obtaining vacancy and that permits would not be granted by the city until the rental unit was vacant.

Turning next to the landlord's Notice. Section 52 of the *Act* reads:

52 Form and content of notice to end tenancy

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, **state the grounds for ending the tenancy,**

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

Section 62(2) of the *Act* states:

The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

The landlord's Notice contains faults in that the landlord has not stated whether permits and approvals are required by law and are attached or if no permits are required by law to do the work. Neither check box has been marked. Further, details of the work planned is not stated on the Notice.

In this case, I find that neither of the check boxes noted on the form correlate to the landlord's situation. While permits are indeed required to demolish the house, I am satisfied the landlord is unable to obtain the permits because the city's pre-requisite of capping services to the house could not be achieved while the house is occupied. Both the options on the form are inaccurate and I find the landlord's choice to mark neither box is entirely appropriate.

Second, I find that since the landlord attached the letter dated October 31, 2019 to the Notice, the landlord has stated the details of the work planned. The letter states the existing house would require removal and I am satisfied this accurately describes the work planned. As such, I find the Notice to End Tenancy contains sufficient information to comply with the requirements set forth in section 52.

Lastly, the effective date stated on the Notice is February 28, 2020. In accordance with section 53, the effective date is automatically changed to February 29, 2020, the earliest date that complies with the required notice period.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on February 29, 2020**. Should the tenants or anyone on the premises 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: January 23, 2020

Residential Tenancy Branch