



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1136 Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M, OLC, FFT**

Introduction

This hearing dealt with a joined application filed by multiple tenants 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 pursuant to section 49 of the *Act*;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

A representative of each of the units attended the hearing as tenants as did their counsel, SX. Counsel for the landlord, KL attended the hearing and was accompanied by property manager, DW. As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants’ Applications for Dispute Resolution and evidence and the tenant’s counsel confirmed receipt of the landlord’s evidence. Based on their testimonies, I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Should the landlord be compelled to comply with the *Act*, Regulations or tenancy agreement?

Can the tenants’ filing fees be recovered?

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, 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 landlord's counsel provided the following synopsis of their argument. This property is a 10-floor building with 19 suites. The building is strata titled, however all the strata lots are owned by the same corporate entity, the named landlord in this case. The owner of the building wants to sell the individual strata lots after the building undergoes extensive renovations.

As far as land titles is concerned, there is no requirement to convert the individual units to strata lots as they are already registered as such. The issue, as related by the landlord, is that the rental units will no longer be used as tenanted rental units owned by the single landlord; they will be sold off as individual units owned by separate purchasers of the strata lots. At the end of the day, it's no longer going to be a tenanted building.

The landlord's property manager testified that the renovations being done to the building are beyond just cosmetic. She describes it as a '*huge undertaking*'. During that time, the building will be completely non-functional as a living space for tenants. The estimated time to complete the renovations will be greater than one year. The floorplans of units will be reconfigured, and the entire building's plumbing will be re-piped. Electricity to the building will be shut off, and the elevator will be out of service during the renovation. Lastly, the exterior of the building will be re-clad in a new finish and the exterior windows will be removed and replaced. There is currently asbestos abatement going on in the first floor which is being kept within those units located on that floor. The remainder of the renovations cannot be completed until the building is vacant, due to safety concerns.

The landlord submits that they have been open and forthright throughout the process, and directed me to the letter dated July 31, 2019 sent to the tenants. In this letter, the landlord advises the tenants that:

the proposed future plans for the building are to renovate extensively all suites and common areas. It is then the intention of the Owner to sell the suites as condominiums. The building is already strata titled.

The landlord sent more correspondences to the tenants extending the offer to stay longer, and others revoking those extensions between late September and late November 2019. On January 14th, the landlord gave the tenants a final letter advising

the owner has decided to move forward with plans to renovate and sell the units. Therefore, termination notices will be issued this week. All compensation will be reinstated.

Previous compensation offered to the tenants included the equivalent of four months' rent recovery, an additional \$1,000.00 moving allowance and the potential for an additional month's rent for leaving before March 31st. On January 24, 2020, the landlord served the tenants with the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice"). The effective date on the Notice is May 31, 2020 and the reason stated for ending the tenancy is because the landlord is going to convert the residential property into strata lots under the *Strata Property Act*.

Tenants counsel put forward three arguments to the Notice being valid. First, since the lots are already strata titled, the landlord's claim to convert them is false. Second, if the landlord were to convert the units to strata lots, the *Strata Title and Cooperative Conversion Guidelines* would apply. A copy of those guidelines was provided. Tenant's counsel points out that none of the tenants have given their consent, nor do they feel their interests have been adequately respected, as stipulated in the Guidelines.

Lastly, the tenants question the landlord's good faith in issuing the Notice. The argument put forward is that the landlord was going to perform cosmetic renovations upon the rental units before re-renting them to new tenants at a higher rate of rent.

Analysis

The parties agree that each of the tenants who filed the Application for Dispute Resolution were properly served with the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit. The landlord does not dispute that the tenants filed their respective applications to dispute their Notices in accordance with section 49(8) of the *Act*.

Section 49(6) of the Residential Tenancy *Act* (RTA) allows a landlord to end a tenancy 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;
- b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- c) convert the residential property to strata lots under the *Strata Property Act*;

- d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
- e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
- f) convert the rental unit to a non-residential use.

Counsel for the landlord submits that the form, '*Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit*' is inadequate to describe the reasons for ending the tenancy as it applies in this situation. He fully acknowledges that each of the rental units in this building are strata lots, as registered in the land titles office. The landlord in this case is the corporate owner of the building and is the *de facto* owner of all the strata lots. In order to do the extensive renovations to the building before selling the individual units, the landlord requires every one of the rented units to be vacant.

The landlord chose to use section 49(6)(c) of the *Act* as the reason for ending the tenancy, to convert the residential property to strata lots under the [*Strata Property Act*](#). Does this section most closely match the intentions of the landlord? I find there is sufficient evidence shows that it does.

First, the tenants argue that the lots are already strata titled and therefore the landlord's claim that they are yet to be converted is false. While the basis of their argument holds some weight, I look at the context upon which the Notice was given. The landlord has provided sufficient evidence to persuade me that the eventual goal was to convert the rental units into individual units and sell them to individual buyers. Once they became individual units, they are would no longer be rental units, unless the purchasers of the units choose to rent their unit out.

In choosing the right box to check in the form, *to convert the residential property to strata lots*, I turn to the definition of residential property in section 1 of the *Residential Tenancy Act*:

"residential property" means:

- a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- c) the rental unit and common areas, and
- d) any other structure located on the parcel or parcels

The '*residential property*' is a building. The building will be sold off as individual units to prospective purchasers after undergoing extensive renovations. I find that the reason chosen to end the tenancy on the Notice most closely matches the intent of the landlord and that the landlord has provided sufficient evidence that the reasons for ending the tenancy as shown on the Notice is valid.

The second argument put forward by the tenants is that none of the tenants have given their written consent or feel their interests have been adequately respected, as required by the guidelines provided by the city. I reviewed the guidelines provided by the tenant's counsel and I conclude that these guidelines are meant for the '*approving authority*' to allow the conversion of a residential property to strata lots. First, the '*approving authority*' was defined in the guide as that city's city counsel, not this arbitrator. Second, and perhaps more importantly, since the residential property is already strata titled, I find this argument cannot succeed, since city counsel's approval was not required.

Lastly, the tenants argued that the landlord does not have a good faith intention in ending the tenancy. In their submission, the tenants state '*this is a classic case of renovations where cosmetic renovations are undertaken as a premise to remove long term tenants so higher rents can be charged with new tenants.*' Residential Tenancy Policy Guideline PG-2B [Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use] describes good faith as follows:

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.

The evidence shows that as early as July 2019 the landlord had been upfront about their intentions about selling the units individually. In each of the subsequent correspondences, the landlord has either extended offers to the tenants to stay or revoked the offers, however I find the landlord never waived from their original intentions of eventually selling the strata lots. I find insufficient evidence to show the

landlord intended on performing cosmetic changes to the rental units then re-rent them to higher paying tenants as the tenant's advocate alleges. I also find the landlord has offered the tenants financial incentives far greater than the legislation mandates in order to encourage the tenants to vacate the rental units. I do not find the landlord is trying to avoid their obligations under the *Act*. Given these findings, I am satisfied the landlord was acting in good faith when issuing the Notices to End Tenancy.

As stated earlier in the analysis, I found that section 49(6)(c) most closely matched the reasons for ending the tenancy. Turning to the other reasons for ending the tenancy under section 49(6), I find the landlord wasn't going to demolish the rental unit, convert the residential property into not for profit housing, convert rental units for use by a caretaker or convert rental units to non-residential use. There may be the argument that the landlord was renovating or repairing the rental units in a manner that requires the rental unit to be vacant however I find that the renovations are part and parcel of the landlord's ultimate goal of selling the strata lots to individual purchasers, thereby ending their use as rental units.

Section 62(2) of the Act allows the director to make any finding of fact or law that is necessary or incidental to making an order under this Act. Pursuant to section 62(2), I find that the reason stated in the Notice for ending the tenancy is that the landlord has the necessary permits and approvals required by law and intends in good faith to convert the residential property to strata lots under the *Strata Property Act*. For the above reasons, I uphold the landlord's Four Month Notice to End Tenancy.

Section 55(1) of the Act states if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*. The landlord will be granted an Order of Possession effective May 31, 2020.

The tenants also sought an order for the landlord to comply with the Act, Regulations or tenancy agreement, stating in their application that they want the landlord to act in good faith. As I have found the landlord acted in good faith when issuing the Four Month Notice to End Tenancy, I dismiss this portion of the tenants' claim.

Lastly, as the tenants' applications were not successful, the tenants are not entitled to recovery of their respective filing fees for the cost of their applications.

Conclusion

I grant an Order of Possession to the landlord effective May 31, 2020.

The remainder of the tenants' applications are dismissed.

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: April 29, 2020

Residential Tenancy Branch