



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M; FFT

Introduction

The tenant filed an Application for Dispute Resolution on February 12, 2020 seeking an order to cancel the 'Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use' (the "Four Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") originally convened on April 17, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants and the landlord, also represented by legal counsel, attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The matter was adjourned as per my Interim Decision on April 17, 2020. This allowed the tenant a proper amount of time to review the matter and prepare submissions accordingly. I allowed no further submissions by either party in the interim period before this reconvened hearing on May 4, 2020.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the Four Month Notice pursuant to section 49 of the *Act*?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the residential tenancy agreement that the parties to this dispute signed on February 28, 2018. A prior verbal agreement was in place since approximately 2013. The rent payable was \$1,440.00 per month and this increased in 2018 to \$1,497.60 per month, payable at the end of each month.

On September 30, 2019, the landlord sold the property and intend to close the sale by June 1, 2020. The landlords issued a Four Month Notice on October 29, 2019, for the effective end-of-tenancy date on March 1, 2020. The tenant filed an application to cancel that notice, and an Arbitrator so ordered it cancelled on January 13, 2020, determining that the landlord had not complied with the *Act* by not providing proof that permits were in place. This decision means the Four Month Notice was not valid.

The landlord issued this subsequent Four Month Notice on January 18, 2020, delivering it to the tenant in person on that date. This sets the vacancy date at May 31, 2020. The indication is that renovations will be performed, requiring vacancy for five months – this is for all pipes, electrical wiring, kitchen and bathroom to be replaced. These bring “safety and hygiene concerns” when “the entire home needs a complete overhaul.” The landlord provided copies of the permits issued for electrical installation and the municipality.

The tenant then applied to cancel this Four Month Notice on February 18, 2020. The tenant’s application provides that they feel “the plumbing and electrical work can be done when [they] live here”. Additionally, “the basement has drop ceilings and [is] easy to access and we have 2 bathrooms.” The tenant stated they were unaware whether the landlord owns the unit because “they said they were selling it.”

The landlord’s submissions, presented by their legal counsel, are as follows:

- Upon sale of the property, the buyer stated to the landlord on October 3, 2019 that they wished to renovate the property “with a complete overhaul.”
- These renovations include: new amenities in each bathroom; new flooring throughout; interior paint; washer/dryer connections; upgrade kitchen, including plumbing.

- Two permits are in place for planned renovations. One is issued to the landlord; the other is issued to the buyer's agent.
- The work cannot be completed with the tenant in the unit – this is supplemented with contractors and the agent for the buyer attending the hearing and prepared to speak to this.
- The unit will eventually be established as a 'home base' during major construction projects for development in the immediate area.

Additionally, the landlord provided evidence that the buyer intends to occupy the rental unit. A Buyer's Notice dated October 25, 2019 contains the following statement:

The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation . . . intend in good faith to occupy the Property.

Counsel for the landlord spoke to this document in the April 17, 2020 hearing, to show that the buyer is stating they will occupy the property – they'll be doing the work and this will be several months' of the buyer using it for their own purposes. In the hearing, counsel stated the buyers intend to use the unit for workers and friends – this amounts to personal use. The *Act* does not say that the use of a home must be limited to the buyers' use only – here it will be primarily used by the owner.

The landlord provides that "a notice pursuant to s. 49(5) of the *Act* would also have been appropriate in the circumstances." This is a 'Two Month Notice to End Tenancy' for the landlord's sale of the unit. This "would have provided less notice to the tenant than the tenant received in actual fact." They added that it has been more than 9 months' total that the tenant was informed of a notice to end tenancy in October 2019.

The buyer has granted an extension on the contract of purchase and sale. This contract is firm and binding with a sale extension in place to June 1, 2020 and this possession date is the earliest that a transfer can happen. This is the new possession date due to the previous Arbitrator decision specifying the need for the landlord to have proper permits in place as evidence. The landlord submits they have now complied with this requirement.

The tenant provided a copy of each Four Month Notice issued by the landlords, and a copy of the previous Arbitrator decision.

In the hearing, the tenant spoke to the landlord's sale of the rental unit. This means the landlord, in the tenant's estimation, will be doing renovations for the new buyer. This is not done in good faith, and the tenant submits it does not make sense to make renovations to a home likely to be demolished within 5 years, based on its age. This sale is also in line with multi-developments being undertaken in the area in which the landlord has an interest.

Analysis

When a landlord issues a Four Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the Four Month Notice was issued pursuant to section 49(6), and I accept the tenant's evidence that they received this document on January 21, 2020. As the tenant's application was filed on February 19, 2020, I find that they have disputed the Notice within the timeframe required under the *Act*.

Section 49(5) of the *Act*, requiring a Two Month Notice, stipulates:

- (5)A landlord may end a tenancy in respect of a rental unit if
 - (a)the landlord enters into an agreement in good faith to sell the rental unit,
 - (b)all the conditions on which the sale depends have been satisfied, and
 - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(6) of the *Act*, requiring a Four Month Notice, stipulates among other things:

- (6)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 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;

The landlord, as represented by counsel in the hearing, reiterated how they are trying to complete the purchase of the rental unit within a fixed timeframe. I find the landlord is setting out their plans for renovation to the unit – which necessarily involves having proper permits in place – on behalf of the buyer. There is no fixed schedule in which renovations will take place, and the agent for the buyer also presented that the buyer has plans to occupy the unit which I find are non-specific.

Section 49 allows for one provision to end a tenancy when contemplating the sale of a residential property – that is outlined in section 49(5). This section specifies that a landlord may end a tenancy if the purchaser (or a close family member) intends to occupy the rental unit. There is no provision under the *Act* that allows a landlord to issue a notice to end tenancy for any other reason when it is at the request of the purchaser.

Additionally, section C of Residential Tenancy Policy Guideline 2A stipulates:

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose. Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v. Niu* 2019 BCSC 949). The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Vacant possession

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose,. Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy a rental unit and then leave it vacant and unused.

In addition, if the landlord intends to end a tenancy for the purpose of renovation and repair, the repairs must be so significant that they require vacant possession as noted in section 49(6)(b). This is expanded upon in Policy Guideline 2B which states:

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).

Based on the above, the landlord and purchaser's plans are not allowed as reasons under the *Act* to end the tenancy and are in direct conflict with each other, specifically the requirement for the purchaser to occupy the rental unit and the need for vacant possession of the rental unit to complete repairs. Simply put, there is no authority for the landlord to take these actions on the buyer's behalf. The buyer cannot request a sale contingent on a vacant unit for the reasons that the landlord has imparted to the tenant via the Four Month Notice.

Conclusion

For the reasons above, I order the Four Month Notice issued on January 18, 2020 is cancelled and the tenancy remains in full force and effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 20, 2020

Residential Tenancy Branch