Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNL-4M-MT, FFT, OLC, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Applicants under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Cancellation of two separate Four Months' Notice's to End Tenancy for Demolition, Repair, Renovation, or Conversion of a Rental Unit ("Four Month Notice");
- An extension to the legislative time limit to have filed the Application seeking to dispute the Four Month Notice's;
- An order for the Landlord to comply with the *Act*, Regulation or Tenancy Agreement;
- An Order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Applicants L.H. and L.B. and their advocate (the "Advocate"), as well as two agents for Landlord (the "Agents"). All testimony provided was affirmed. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Agents acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and notice of the hearing.

Preliminary Matters

Preliminary Matter #1

The Applicants applied for more time to file the Application for dispute resolution. The Applicants stated that they first attended Service BC in relation to filing an Application on March 23, 2020, and Residential Tenancy Branch ("Branch") records and the documentary evidence before me indicates that the paper Application was signed and dated March 26, 2020, and transmitted to the Branch that same date. During the hearing the Applicants stated that the Four Month Notice's were received by them on

February 25, 2020, and as a result, I find that March 26, 2020, was the last day upon which the Applicants could have filed the Application on time pursuant to section 49 (8)(b) of the *Act*.

Rule 2.6 of the Rules of Procedure states that an Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Branch directly or through a Service BC Office. It also states that the three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

Due to restrictions and office closures as a result of the state of emergency, processing of the filing fee was delayed, as was the processing of the Application by the Branch. As a result, I find that the Application was not properly considered filed under the Rules of Procedure, until the filing fee was processed on May 5, 2020, and was therefore late. However, given the unprecedented and exceptional circumstances relating to the state of emergency, I find that the Applicants intended to file the Application on time and made reasonable efforts to do so. I also find that the delay in payment of the filing fee and the processing of the Application was as a direct result of the current state of emergency, and not the Applicants' failure to act diligently or expediently with regards to the Application. As a result, I grant the Applicants more time to have filed the Application and I accept the late Application for consideration pursuant to section 66 of the *Act*.

Preliminary Matter #2

Multiple remedies under multiple unrelated sections of the *Act* were sought in the Application. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Applicants sought to cancel two Four Month Notice's, I find that the priority claims relate to the validity of the Four Month Notice's. As the other claims are not sufficiently related to the Four Month Notice's, I therefore exercise my discretion to dismiss the following claims with leave to reapply:

- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement.

Preliminary Matter #3

After the start of the hearing it became clear that the Application was filed by two tenants under separate tenancy agreements, residing in separate rental units, both of whom received Four Month Notice's from the landlord named as the respondent. During

the hearing the applicants and their Advocate confirmed that this is correct. As a result, and pursuant to Residential Tenancy Policy Guideline (the "Policy Guideline") #13, I find that the Applicants are not co-tenants renting one rental unit under one tenancy agreement. As a result, they were advised that their claims cannot be heard together under one Application for Dispute Resolution and that they each must file a separate Application for Dispute Resolution which may be joined and heard together by the Residential Tenancy Branch pursuant to rule 2.10 of the Rules of Procedure so that the dispute resolution process will be fair, efficient, and consistent.

I advised the Applicants that in determining whether individual applications will be joined, the Branch considers the following criteria:

- whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- whether all applications name the same landlord;
- whether the remedies sought in each application are similar; or
- whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Although there was some disagreement about who the landlords were under the respective tenancy agreements at the outset of the hearing, the Agents for the Landlord stated that both rental units are owned by the same company and operated by authorized agents of that company. Documentary evidence before me in the form of tenancy agreements, letters, and previous decisions from the Branch between the applicants as individuals and the landlord named in this Application, demonstrate to my satisfaction that the properties are owned by the same corporation, specifically the landlord named as the Respondent in the Application. I am satisfied that the same landlord (the "Landlord") owns and operates both rental units through their authorized agents, that both applicants were served with a Four Month Notice for the same purpose by the Landlord or their agents, and that both applicants are seeking the same remedy, cancellation of the Four Month Notice's. As a result, I find that the same or similar facts will likely need to be considered and that the same or similar findings of fact or law will need to be made when assessing Applications for Dispute Resolution filed by either applicant in relation to cancellation of the Four Month Notice's.

However, I advised the parties that as the Applicants are not co-tenants under one tenancy agreement, and have not each filed their own Application for Dispute Resolution, the hearing cannot proceed as scheduled with both Applicants listed in the Application. I therefore provided the Applicants and their Advocate with the following options:

1. The Applicants could withdraw the Application before me for consideration and the individual Applicants could each file their own Application for Dispute Resolution with the Branch. The individual Applicants could then request that the

Applications be joined and heard together pursuant to rule 2.10 of the Rules of Procedure and the Branch could determine whether to join them or not. This is not an extension of any statutory time limit.

2. The Applicants could decide to proceed with the hearing as scheduled, but name only one tenant of their choosing as the Applicant.
3. The Applicants could request an adjournment in order to allow both Applicants the opportunity to file their own Applications for Dispute Resolution and I would then have the Applications joined and heard together at the reconvened hearing. The Applicants and their Advocate were advised that if they wanted to request an adjournment for this purpose, I would hear arguments from all parties on the matter of the adjournment request, and then I would decide whether or not to grant the request pursuant to rule 7.9 of the Rules of Procedure.

A short recess was granted in order to allow the Applicants and their Advocate to discuss their options and to decide how they would like to proceed. When the hearing was reconvened the Applicants and their Advocate stated that they wished to request an adjournment for this purpose, among other reasons. Specifically the applicants and their Advocate stated that they had been mislead by Service BC and the Branch that the Application was acceptable as they had not been contacted or advised at any point during the Application process or prior to the hearing that there was a necessity for the Applicants to file separate Applications for Dispute Resolution and that disallowing one of the Applicants to file an Application for Dispute Resolution to be joined with the current Application would result in a miscarriage of justice.

The applicants also requested an adjournment for the following reasons:

- L.H. has recently had COVID-19, among other health conditions, and is very ill, which has impacted their ability to access resources, gather and serve evidence, respond to the Landlord's evidence, and to retain legal counsel in a timely manner.
- L.H. is medically infirm and requires the assistance of a lawyer in order to properly understand and respond to the Landlord's evidence and make a full and proper defense.
- Their lawyer has not yet had an opportunity to fully read, understand, and respond to the Landlord's evidence as it was only received by them recently due to the date upon which it was served by the Landlord or their agents, delays resulting from L.H.'s COVID-19 infection and community restrictions due to COVID-19 in general.
- Allegations that the development permits for the properties upon which the rental units are located have recently been changed, necessitating additional time to gather relevant evidence in relation to their claims for cancellation of the Four Month Notice's.

The Agents for the Landlord disputed that an Adjournment is necessary or warranted, stating that the Applicants' failure to follow the proper processes and procedures with regards to filing and joining Applications for Dispute resolution is not their responsibility and their failure to do so does not warrant and adjournment. The Agents also stated that the Applicants received the Landlord's documentary evidence with sufficient time to respond in accordance with the Rules of Procedure and that as this it their Application, they should have been prepared to proceed as scheduled. The Agents also denied that the reasons for serving the Four Month Notice's have changed or that any subsequent changes, should they exist, to any development permits in any way invalidates the effectiveness of the Four Month Notice's under the *Act*.

Having carefully considered the arguments of the parties, the *Act*, the Rules of Procedure, and the fundamental principles of natural justice, I find that an adjournment is warranted under these very specific circumstances, to allow the Applicants proper access to justice. Given that two separate tenancy agreements were submitted with the application showing two separate addresses for the Applicants, I agree that the Applicants should have been advised by the Branch at some point prior to the hearing that the Application may not be accepted by an Arbitrator as-is, which could impact the outcome of the hearing, and that the Applicants should have been provided with an opportunity to correct the deficiency in the Application prior to the hearing, should they have wished to do so.

I am also cognizant that the matters at hand relate to the possible end to the tenancies during a pandemic and a state of emergency, and that failing to allow both applicants to have their claims heard at this time may result in the inability of one applicant to dispute their Four Month Notice as the timeline for having filed that Application for Dispute Resolution is now long-past. Further to this, I am satisfied based on the testimony before me in the hearing that one of the applicants has suffered a recent COVID-19 infection, and that this infection, along with other health conditions, and general community and service restrictions as a result of the current state of emergency, have limited the Applicants' ability to find and secure assistance with this matter, which they state they require due to medical infirmity and the complexity of the matters, and to gather and submit evidence and arguments for my consideration.

Based on the above, I amended the Application to name only the Tenant L.H. as the Applicant, and granted the Applicant's request for adjournment in order to allow the Tenant L.B. to file an Application for Dispute Resolution seeking cancellation of a Four Month Notice, and recovery of the filing fee, if applicable, to be crossed with this Application, so that both Applications can be heard and decided together at the

reconvened hearing. I made it clear to the parties during the hearing that a further adjournment will not be granted to allow additional time for L.B. to file their Application, for either party to seek representation or assistance, or to allow for the gathering or service of additional evidence for consideration, except in exceptional and extenuating circumstances, and that the parties are expected to serve and exchange their evidence in advance of the reconvened hearing as set out in my orders below and to make arrangements to appear at the reconvened hearing as scheduled, or to have someone attend on their behalf if they are unable to attend themselves. I requested that all parties submit a list of dates of unavailability to me by 4:30 P.M. on the date of the original hearing, June 9, 2020, and I have had the reconvened hearing date and time scheduled with these dates in mind.

Based on the above, I issue the following Orders:

1) **I order** that the Application be adjourned.
2) **I order** that the hearing be reconvened at the date and time identified in the Notice of Hearing documents attached to this decision.
3) **I order** that the Applicant L.B. is entitled to file their own Application for Dispute Resolution seeking cancellation of a Four Month Notice, an extension of the legislative time limit for filing that Application (More Time), and recovery of the filing fee, if applicable.
4) **I order** that any Application filed in accordance with order #2 above shall be joined with this Application and heard at the reconvened hearing, provided that it is filed through the Online Dispute Resolution system, or personally at either Service BC or the Residential Tenancy Branch no later than 11:59 P.M. on Friday June 12, 2020, and that the filing fee has been paid by that date and time or that all documents required for a fee waiver have been received by the Residential tenancy Branch or Service BC by that date and time. Any Application not meeting these requirements will not be joined with this Application or heard at the reconvened hearing.
5) **I order** L.B. to serve the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, on the Landlord or their agents, within three days of filing the Application.
6) **I order** that both parties serve on each other and submit to the Residential Tenancy Branch (the “Branch”), any additional documentary or other evidence not already submitted to the Branch, that they wish to rely on at the reconvened hearing, in compliance with the timelines set out below:
    a) The Tenants must serve their evidence on the Landlord or their agents, and submit this evidence to the Branch, as soon as possible, and not later than 5 days after receiving this Interim Decision and the notice of the reconvened hearing from the Residential Tenancy Branch.

b) The Landlord must serve their evidence on the Tenants, and submit this evidence to the Branch, as soon as possible, and not later than 5 days after being served with the Tenants' evidence or two days before the reconvened hearing, whichever is sooner.

7) **I order** the Tenant L.H. to submit confirmation of their COVID-19 positive diagnosis to the Residential Tenancy Branch as soon as possible and not less than five (5) days after receiving this Interim Decision from the Residential Tenancy Branch, or five (5) days before the reconvened hearing, whichever is sooner, as this formed part of the basis for the granted adjournment.

8) **I order** that this is not an opportunity for either party to file an Application for Dispute Resolution to be crossed or joined with this Application, except as already set out in these orders, and that this is not an opportunity for either Tenant to Amend their respective Applications.

9) **I order** that the parties are entitled to serve their evidence and any Notice of Dispute Resolution Proceeding Package on one another by email at the email addresses stated in the Application in compliance with Ministerial Order No. MO89. The parties may also serve one another in compliance with sections 88 and 90 of the *Act,* Part 2, Section 9 of Ministerial Order No. MO89, and the Director's Order dated March 30, 2020.

a) Ministerial Order No. MO89 may be found here: http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089 or under the heading "Important Links" when you follow the link on the Branch website related to COVID-19.

b) A copy of the Director's Order may be found here: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/temporary/ordercovid19.pdf or under the heading "Important Links" when you following the link on the Branch website related to COVID-19.

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: June 10, 2020

Residential Tenancy Branch