Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M-MT, FFT

Introduction

This hearing dealt with three Tenant Applications for Dispute Resolution ("Applications"), one of which is inactive, filed by two Tenants under separate tenancy agreements, that were joined to be heard together seeking orders to have their respective Four Month Notice's to End Tenancy for Landlord's Use of Property (the "Four Month Notice's") cancelled, and recovery of their filing fees.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was originally convened by telephone conference call on June 9, 2020, at 9:30 A.M. and was attended by the Tenants and their advocate (the "Advocate"), and two agents for the Landlord (the "Agents"), all of whom provided affirmed testimony. The Agents acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing, and the documentary evidence from the Tenants, and the Tenants raised no concerns regarding the service and consideration of the documentary evidence before me from the Landlord. As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration. The hearing was subsequently adjourned due to the complexity of several preliminary matters and time constraints, and an Interim Decision was made on June 10, 2020. The reconvened hearing was set for June 23, 2020, at 11:00 A.M. and a copy of the Interim Decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch"). For the sake of brevity, I will not repeat here in detail the matters discussed or the orders made in the Interim Decision, and as a result, the Interim Decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on June 23, 2020, at

11:00 A.M. and was attended by the Tenants and the Advocate, an observer and support person for the Tenants, and the Agents for the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised concerns regarding the service or acceptance of the documentary evidence before me for consideration, and as a result, I accepted this evidence for consideration. However, I refer only to the relevant facts, evidence and issues in this decision.

Preliminary Matters

In my Interim Decision dated June 10, 2020, I permitted the Applicant L.B. to file their own Application for Dispute Resolution with the Residential Tenancy Branch (the "Branch") seeking cancellation of a Four Month Notice, which I stated I would permit to be crossed with L.H.'s Application (the Application originally before me for review) at the reconvened hearing, provided it was filed within the timeframes outlined in my Interim Decision and in one of the specified manners. My orders with regards to how and when L.B. would need to file their Application for Dispute Resolution if they wished it to be crossed with L.H.'s at the reconvened hearing set for June 23, 2020, at 11:00 P.M. were unambiguous.

Despite the lack of ambiguity in my orders, there was significant confusion at the reconvened hearing regarding whether L.B.'s Application had been filed as ordered and therefore whether it should be crossed and heard along with L.H's. Branch records with regards to L.B.'s Application, when and how it was made, and when and how the filing fee were paid were inconsistent and lacking in both detail and sufficiency. Further to this, there were two different file numbers for L.B. and the file notes appeared to be confused between the two Applications. In addition, L.B. and their advocate provided affirmed testimony that the Application was filed on time, in-person at Service BC and that the Branch had confirmed via numerous emails and phone calls that the Application had been made, and the filing fee paid, within the timelines set out in my orders.

After approximately 48 minutes, the issue with regards to whether L.B.'s Application had been filed on time was still unresolved and I advised the parties that in order to fully ascertain whether or not the Application had been filed in compliance with my orders, an adjournment would be required so that I could obtain the email correspondence allegedly received by the Advocate from the Branch. As a result, I offered the parties the following options:

1. I could adjourn and reconvene the matter so that I could fully review the Branch records and obtain from L.B. and their Advocate, the email correspondence from the Branch in their possession allegedly confirming that L.B.'s Application had been made on time; after which I would render a decision regarding whether or not to cross the Applications, or

2. The parties could agree to have L.B.'s Application joined with that of L.H.'s, regardless of whether it was filed in compliance with my orders, and the hearing could proceed as scheduled in relation to both Applications.

The parties opted to allow L.B.'s Application to be crossed with that of L.H.'s and to have both heard and decided together as a result of this hearing without the need for a further adjournment. As a result, I crossed L.B.'s Applications with that of L.H., and the hearing preceded as scheduled. With the consent of the parties, the hearing continued for 40 additional minutes past the allotted end time for the hearing, in order to allow sufficient time for the matter to be heard without the need for an adjournment.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of their respective Four Month Notice's to End Tenancy?

If not, is the Landlord entitled to an Order of Possession for either rental unit pursuant to section 55 of the *Act*?

Are the Tenants entitled to recovery of their filing fee's?

Background and Evidence

The parties agreed in the hearing that the Tenants reside in rental units owned by the Landlord and operated by the Landlord or their agents, and that periodic (month-to-month) residential tenancies under the *Act* exist between each of the Tenants and the Landlord or their agents. There was also consensus that the Tenants had both been served with Four Month Notice's as the Landlord wishes to demolish the rental units as part of a redevelopment plan.

The Four Month Notice's in the documentary evidence before me are both signed by the Agent L.P. and dated February 20, 2020, have effective dates of June 30, 2020, contain the addresses for the rental units and indicate that the Landlord is seeking to end the tenancies as they plan to demolish the rental units and have all of the permits and approvals required by law to do so. The Four Month Notice's also indicate that the Landlord received approval from the relevant municipality between February 24 - February 25, 2020, to redevelop the properties on which the rental units are located. In the hearing both Tenants acknowledged being served with their respective Four Month Notice's on February 25, 2020.

The Agents stated that the Landlord has received numerous approvals and permits to redevelop the properties on which the rental units are located, copies of which were submitted for my review, and argued that the Landlord therefore requires vacant possession of the rental units so that they can be demolished, and redevelopment can begin. Although the Landlord had submitted numerous permits for my review, I noted that a demolition permit was not submitted for either property and inquired with the Agents if they had been obtained. The Agent for the Landlord K.N. stated that they have all required permits and approvals in order to obtain the demolition permits except for the hazardous materials assessment report and the clearance/abatement letters, and as a result, the demolition permits have not yet been issued. The Agent stated that they have not had the hazardous materials assessments and any required abatement completed out of consideration for the Tenants, who still reside in their respective rental units, as there is an ongoing pandemic and the Tenants have health conditions. When asked, the Agent acknowledged that the hazardous materials assessment could be completed without vacant possession, although this would present an inconvenience to the Tenants, but argued that any abatement will likely necessitate vacant possession and therefore the tenancies should still end as a result of the Four Month Notice's, despite the fact that the hazardous materials assessments have not yet been completed.

The Tenants and their Advocate argued that the Landlord must have all permits and approvals required by law to demolish the rental unit prior to the issuance of the Four Month Notice's and that as no demolition permits have been issued, the Four Month Notice's are invalid. One of the Tenants also testified that their rental unit does not contain any hazardous materials, such as asbestos, and therefore no abatement is likely required. Further to this, the Tenants and their Advocated argued that the redevelopment plans have changed again, as the Landlord is now hoping to acquire another property as part of the redevelopment, and therefore the Four Month Notice's are premature.

Analysis

Based on the testimony of the Tenants in the hearing, and the absence of any evidence to the contrary, I am satisfied that the Tenants were each served with their respective Four Month Notice's on February 25, 2020. Based on the documentary evidence before me, I am also satisfied that the Four Month Notice's comply with section 52 of the *Act*.

Section 49 (6)(a) of the *Act* states 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 the rental unit and the Four Month Notice (#RTB-29) states on page 3 that landlords must have all the necessary permits and approvals required by law before the Four Month Notice is served.

While the Landlord and their Agents submitted numerous permits and approvals for the redevelopment of the properties upon which the rental units are located, no demolition permits have been received by the Landlord for either property as the required hazardous materials assessments have not been completed. During the hearing the Agent K.N. acknowledged that these assessments could be completed without vacant possession and I do not accept their arguments that the tenancy should end by way of the Four Month Notice's despite the Landlord's failure to have these assessments completed, simply because they believe that these assessments would present an inconvenience to the Tenants due to the pandemic, their individual health conditions, and the nature of the assessments. Although the Agents also argued that any required abatement would necessitate vacant possession, and therefore the tenancies should still end, I am not satisfied that this is the case. One of the Tenants stated that their rental unit contains no asbestos or other hazardous materials and I find it entirely possible that the assessments, which have yet to be completed, could determine that there are no hazardous materials or that the removal of any hazardous materials present can be done, and abatement completed, without vacant possession.

As a result of the above, I am not satisfied that the Landlord has all the permits and approvals required by law to demolish the rental units, or that they have all of the permits and approvals required by law to demolish the rental units that can be obtained without vacant possession, as stated in the Four Month Notice's and as required by section 49 (6) (a) of the *Act*. As a result, I grant the Tenants' Applications seeking cancellation of the Four Month Notice's and I order that the Four Month Notice's are therefore cancelled and of no force or effect.

As the Tenants were successful in their respective Applications, I award them each recovery of one $100.00 filing fee, pursuant to section 72 of the *Act,* regardless of whether more than one $100.00 filing fee was paid by either Applicant. The Tenants are each entitled to deduct $100.00 from the next month's rent payable under their respective tenancy agreements, or to otherwise recover this amount from the Landlord and I order the Landlord to pay the Tenants these amounts.

Conclusion

I order that the Four Month Notice's are cancelled and that the tenancies between the Landlord and L.H. and the Landlord and L.B. are therefore to continue in full force and effect until they are ended by one of the parties in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I award each of the Tenants recovery of one $100.00 filing fee. The Tenants are each entitled to deduct $100.00 from the next month's rent payable under their tenancy agreements, or to otherwise recover this amount from the Landlord and I order the Landlord to pay the Tenants these amounts.

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: July 2, 2020

Residential Tenancy Branch