Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MNDCT, MNRT, RR, FFT

Introduction

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

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the Four Month Notice);
- Compensation for monetary loss or other money owed;
- Recovery of costs incurred for emergency repairs;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

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 convened by telephone conference call and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The Landlord acknowledged service of the Application and Notice of Hearing and both parties acknowledged service of each other's documentary evidence. Neither party raised concerns regarding the service of the Application, Notice of Hearing, or the documentary evidence. As a result, the hearing proceeded as scheduled and the documentary evidence of both parties was accepted for my consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. 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 Tenant applied to cancel a Four Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. I find that the other claims by the Tenant are not sufficiently related to the Four Month Notice or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- Compensation for monetary loss or other money owed;
- Recovery of costs incurred for emergency repairs; and
- A rent reduction for repairs, services, or facilities agreed upon but not provided.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of the Four Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Four Month Notice?

If the Tenant's Application is dismissed or the Four Month Notice is upheld, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on

June 14, 2009, states that the month to month tenancy commenced June 15, 2009, that rent in the amount of $2,500.00 is due on the 15th day of each month, and that a $1,100.00 security deposit was to be paid. During the hearing the parties agreed that these are the correct terms for the tenancy agreement.

The Landlord stated that on August 16, 2020, they emailed the Tenants the Four Month Notice as renovations and repairs are required to the rental unit that necessitate vacant possession. During the hearing the Tenants confirmed receipt by email on that date.

The Four Month Notice in the documentary evidence before me is signed and dated August 16, 2020, has an incorrect effective date of August 16, 2020, which is automatically corrected to January 14, 2021, pursuant to sections 49(2)(b) and 53 of the Act, and states that the reason for ending the tenancy is because the Landlord intends to perform renovations and repairs that are so extensive that the rental unit must be vacant. No indication of the number of weeks or months that the rental unit must be vacant was given and the Landlord selected the box indicating that no permits or approvals are required by law for the work being done.

In the Four Month Notice the Landlord indicated that during an inspection conducted on August 16, 2020, it was determined that the house needed major repair, and that repairs to the bathrooms, carpets, gutters, kitchen cabinets, ceilings (referred to as the “roof” in the Four Month Notice) in the laundry room and dining room, and the replacement of kitchen flooring was required, due to damage and water leaks.

During the hearing the Landlord stated that there is damage throughout the entire house and that it would be very expensive to do the necessary repairs while the Tenants continued to reside there as they would have to hire multiple different contractors who would have to work around the Tenants. The Landlord stated that this piecemeal strategy would be financially difficult for them and argued that contractors would be unwilling to complete the renovations and repairs while the Tenants resided there as it is inconvenient, dangerous, and there are risks associated with COVID. The Landlord also argued that the house is unliveable.

The Tenants responded by stating that the rental unit is liveable, as they live there and have lived there since 2009 without issue, and that the damage allegedly existing, such as damage to the carpets and the kitchen cabinets, is non-existent, and that any repairs or renovations required or desired are either not significant in nature, or are cosmetic in nature, and therefore vacant possession for their completion would not be required. The Tenants also stated that the Landlord was aware of a bathroom leak as a result of old

caulking around the bathtub, which necessitated the removal of tiles in the bathroom and caused damage to the living room and dining room ceilings as well as a small dishwasher leak which caused a small amount of damage to kitchen flooring, and did nothing about it. The Tenants stated that they themselves had to complete repairs to some of these areas, such as re-caulking the bathtub, removing and replacing a patch of drywall in the ceiling and purchasing their own dishwasher as the Landlord refused to replace the broken/leaking one or have the drywall properly repaired and argued that they cannot be held responsible for the Landlord's failure to properly maintain the rental unit as required over the course of their 11 year tenancy. The Landlord denied any knowledge of the bathroom or dishwasher leaks and stated that had they been aware of these issues, they would have properly dealt with them.

The Tenants disputed the Landlords claims that contractors would be unwilling to complete any renovations and repairs while they lived there or as a result of COVID, and one of the Tenants stated that they themselves are a contractor and currently have three ongoing renovations at occupied properties, which is very common, even during the pandemic. The Tenants also argued that it is clear from the Landlord's own documentary evidence that the Landlord simply wants to renovate the rental unit for resale, which is easier and cheaper to do if the property is vacant, and that the Landlord is willing to allow them to stay if they simply pay more rent. As a result, the Tenants argued that the Four Month Notice had been served in bad faith.

The Landlord denied acting in bad faith, reiterating that the rental unit is unliveable and stating that they are not selling the property but rathe transferring it to their business partner. The Landlord also agreed that the Tenants could stay if they returned the rental unit to its original condition at their own cost, as the rental unit was new when the tenancy began in 2009, and stated that the Four Month Notice is not about increasing rent.

Both parties submitted documentary evidence for my consideration in support of their positions.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that the Tenants were served with the Four Month Notice by email on August 16, 2020. Although email is not a regularly accepted method of service under the Act, as the Tenant's acknowledged receipt by email on that date, I find that the Four Month Notice

was sufficiently served on August 16, 2020, for the purposes of the Act pursuant to sections 71(2)(b) and (c) of the Act.

Section 49(6) 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 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;
> (f)convert the rental unit to a non-residential use.

At the outset of the hearing I clearly advised the parties that the standard of proof in the hearing was a balance of probabilities and that the burden to prove the validity of the Four Month Notice and the grounds upon which it was served under the Act, was on the Landlord, pursuant to rule 6.3 of the Rules of Procedure. Despite being provided with this information, the Landlord provided no testimony during the hearing about what renovations or repairs were necessary or why permits were not required. Instead, the Landlord stated only that there was damage throughout the entire home. Further to this, the Landlord submitted only the following documentary evidence in support of their position that renovations and repairs to the rental unit are required that necessitate vacant possession:

- One photographs of a ceiling patch;
- One photograph of some cracked drywall beside a door;
- Two photographs of stained or dirty carpets;
- One photograph of what appears to be an exterior drain, surrounded by some dirt;
- One photograph of what appears to be a drywall seam in a ceiling that requires either painting, mudding, or both;
- And invoices for what look like previous repairs and maintenance for the property.

The Landlord also submitted a copy of a text message conversation wherein they state the following, which has been reproduced as written:

"We have decided to sell the house and it need major renovation before we bring it in the market"

Overall I find the Landlord's documentary evidence and testimony insufficient to establish that the renovations and repairs listed by the Landlord in the Four Month Notice are required or will be completed, that permits are not in fact necessary for any of the renovations or repairs listed, or that vacant possession of the rental unit is required for the renovations or repairs noted in the Four Month Notice to be completed as a matter of necessity, rather than a matter of cost or convenience for the Landlord. Residential Tenancy Policy Guideline 2B section E sets out relevant caselaw in which it has been established that in order to end a tenancy under section 49(6)(b) of the Act, renovations and repairs must be so extensive as to require the rental unit to be vacant in order for them to be carried out and that that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty.

Further to this, I have serious concerns, given the above noted text message, that the Four Month Notice has been served in bad faith and that the Landlord is actually intending to obtain vacant possession of the rental unit so that it can be refurbished for easier and more lucrative sale.

Based on the above, I grant the Tenants' Application seeking cancellation of the Four Month Notice and I order that the Four Month Notice is therefore cancelled and of no force or effect. As the Tenants' were successful in their Application, I grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. As per their request in the hearing, and pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $100.00 and I order the Landlord to pay this amount to the Tenants.

Conclusion

The Four Month Notice dated August 16, 2020, is cancelled. I therefore order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the Act.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$100.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Landlord is therefore cautioned that costs of such enforcement are recoverable from them by the Tenants.

In lieu of serving and enforcing the above noted Monetary Order, I also authorize the Tenants to withhold $100.00 from the next month's rent payable to the Landlord under the tenancy agreement, should they wish to do so, pursuant to section 72(2)(a) of the Act. The Tenants are cautioned that they may either deduct the $100.00 from rent or serve and enforce the attached Monetary order, but not both.

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: November 4, 2020

Residential Tenancy Branch