Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

The tenant completed their Application for Dispute Resolution (the "Application") in this matter on October 13, 2020. They are seeking a cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the "Four-Month Notice") issued by the landlord on September 29, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 5, 2021. Both the landlord and the tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed their receipt of the other's prepared documentary evidence. On this basis, the hearing proceeded.

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

Background and Evidence

The tenant provided a copy of the tenancy agreement they had from 2007. This shows the basic terms of the agreement. At the time of the landlord issuing the Four-Month Notice, the rent amount was $1,014, payable on the first day of each month.

The tenant provided a copy of the Four-Month Notice issued by the landlord on September 27, 2020. The document provides the move-out date of January 31, 2021. The document indicates the landlord gave this document to the tenant in person on the same date of its issuance. The document on page 2 gives the indication that the reason for ending the tenancy is to "Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property."

In the hearing, the landlord presented that the previous on-site caretaker left "abruptly" in 2019. After this, the property manager took over; however, they then left the position. When that occurred, the owners of the property decided to go with off-site management of the property, rather than an on-site manager. When this manager vacated, this unit was also then re-rented.

With no on-site manager then in the building, other tenants in the property raised their concerns due to questionable activities observed or reported within the building or building area. Thereafter, the landlord began the search for a new on-site building caretaker/manager.

The Applicant tenant here resides in the rental unit which the landlord feels is the most appropriate for on-site management. This affords an optimal location for viewing the areas of the property that prove to be problematic. The landlord also posited in the hearing that the unit itself was more amenable to accommodation of a manager's family.

The landlord provided a copy of the Residential Tenancy Agreement signed by the incoming building custodian on December 1, 2020. They also provided a copy of the 'Residential Caretaker Employment Agreement' dated December 1, 2020 with that same Resident Caretaker signature. The agreement starts February 1, 2021.

The landlord in the hearing stated this evidence shows "no ruse, no malfeasance, no sleight of hand", standing as proof of the upcoming employment arrangement that requires the rental unit vacancy. As further proof of the good faith of the landlord in this matter, they presented how they twice offered a relocation to the tenant to another building with a reduction in rent for

1 year, after which that rent amount would return to market rate. This offer also included assistance with relocation costs.

The tenant presented a document that outlines their reasons for asserting the landlord is not here acting in good faith. These are:

- this is to evict low rent tenants from the building;
- their previous neighbour was evicted for the same reason; after that, there was no notice to all tenants that the unit was being used for that purpose. This tenant called in to the hearing to provide this testimony, stating as well that they had not noticed any questionable activity toward the rear of the building as the landlord provides here;
- the landlord offered a kitchen renovation to the tenant in early 2020; however, this would be a "new agreement rent increase". Prior to this the tenant had undertaken their own improvements within the unit at their own expense. In the tenant's submission on this point, the landlord has "decided to evict me now after my refusal to sign [a] new agreement.";
- the building manager recently moved out, with the notice to all residents that management was shifting to outside management. With this being the case, the tenant raised the point that they are not using that previous rental unit for the same purpose here.

In the hearing, the tenant outlined the above points in oral testimony. They also outlined how they maintained good relations with all other building residents and never presented any problem to the landlord over all the time of their tenancy. The tenant also explained that a relocation, as offered by the landlord, would then force them to pay more, and this would be a "significant increase comparing to my current rent", and they would more reasonably be able to manage a legal yearly rent increase in their current unit.

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 for ending the tenancy. Additionally, the landlord bears the burden of showing they are acting in good faith.

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 September 27, 2020. As the tenant's

application was filed on October 13, 2020, I find that they have disputed the Notice within the timeframe required under the *Act*.

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

> (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:
>
> (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

The landlord in the hearing reiterated the need for the specific unit in question. I find their direct points on this are twofold. For one, the unit is situated near an area requiring attention, and the landlord chose the unit for this purpose. Secondly, it is a unit that is more amenable to having a caretaker more suitably accommodate a family. I accept the landlord's submissions on these needs and find these are plausible reasons. On these points, I find the landlord has overcome the burden to show they issued the Four-Month Notice in good faith.

I find the tenant's submissions and evidence does not establish that the landlord undertook to end another tenancy in the past. Even as a suggestion, the evidence does not show that the landlord did not utilize the other unit for the reason they had indicated to the other tenant who was a witness in this heariung. There is no evidence to the contrary, and the evidence does not show any bad faith by the landlord in that regard. Indeed, the testimony of the witness was that in their previous dispute resolution decision, the finding of the Arbitrator was that there was no bad faith in the landlord issuing that Four-Month Notice.

Also, the tenant has not provided sufficient evidence to show an ulterior motive linking back to the landlord's offer to renovate the tenant's kitchen in early 2020. It was not an instance where the landlord forced renovations upon the tenant, without consultation, and thereafter raised the rent. I find the tenant has not established the connection between that offer, and the landlord's current need for the caretaker's unit.

The tenant's witness described how their tenancy ended the year prior, this for the other unit's use for the manager. I find this account does not establish the landlord's bad faith. I weigh this evidence – in the form of the witness' testimony of the prior dispute resolution – against the landlord's description of their need for this unit. This is with regard to the questionable activities witnessed in the back area of the building. I find this need is palpable and real -- more so when the landlord described other building residents' requests for a manager on site related to this reason.

In conclusion, I find the landlord has overcome the burden to establish that they issued the Four-Month Notice in good faith. There is no underlying motive or other purpose involved.

This Four-Month Notice issued by the landlord on September 27, 2020 complies with the requirements for form and content set out in section 52 of the *Act*.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

By this provision, I find the landlord are entitled to an Order of Possession. The tenancy shall end on the date specified in the Four-Month Notice, on January 31, 2021.

Conclusion

Under section 55(1) of the *Act*, I grant an Order of Possession effective **January 31, 2021.** Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 6, 2021

Residential Tenancy Branch