Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCMA Surrey Delta Branch
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, CNL-4M, FFT

Introduction

This hearing dealt with two Applications for Dispute Resolution (the Applications) that were filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice);
- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the Four Month Notice); and
- Recovery of the $100.00 filing fee for each Application.

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 Tenant, the Tenants support person, who also acted as an interpreter, three agents for the Landlord M.G., I.V. and M.A. (the Agents) and Legal Counsel for the Landlord, all of whom provided affirmed testimony. The Agent and Legal Counsel for the Landlord acknowledged receipt of the Notice of Dispute Resolution proceeding for both Applications and raised no concerns regarding service or timelines. As a result, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, I have accepted the documentary evidence before me from both parties for 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 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

Preliminary Matter #1

Although one of the Agents, M.G., was personally named as a respondent in the Application, only the corporate landlord is named as the landlord in the tenancy agreement. As a result, I have amended the Application to remove the Agent who was personally named as a respondent and have therefore named only the corporate landlord named in the tenancy agreement as the Landlord in this decision and any associated orders.

Preliminary Matter #2

During the hearing Agents for the Landlord and the Landlord's Legal Counsel requested that they be allowed to submit additional documentary evidence for my consideration with regards to whether the person they intend to have occupy the rental unit for the purpose of the Four Month Notice is a caretaker, manager or superintendent of the residential property.

The Notice of Dispute Resolution Proceeding states that it is important to have evidence to support your position with regards to the claim(s) listed on the application, that evidence must be served to the Residential Tenancy Branch and to each applicant as soon as possible and that instructions for evidence processing are included in the package. It also states that deadlines are critical, and that late evidence may or may not be considered by the arbitrator.

Rule 3.15 of the Rules of Procedure states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Rule 3.19 of the Rules of Procedure states that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. Further to this, rule 6.6 of the Rules of Procedure states that

the onus to prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy falls to the landlord.

Section 49(6)(e) of the Act, the section under which the Four Month Notice was issued by the Landlord, 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property. As a result, I find that evidence relating to whether or not the Landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property, is material to the validity of the Four Month Notice and as a result, I find that it was incumbent upon the Landlord and the Landlord's Agents to have served all evidence they wished to rely on at the hearing in support of the issuance of the Four Month Notice on the Tenant and the Residential Tenancy Branch (the Branch) as soon as possible and not less than seven days before the hearing.

Based on the above, I therefore denied the request of the Agent and Legal Counsel for the Landlord to submit additional documentary evidence for consideration regarding whether the person they intend to have occupy the rental unit for the purpose of the Four Month Notice is a caretaker, manager or superintendent of the residential property. The hearing therefore proceeded as scheduled based only on the documentary evidence already served by the parties on each other and the Branch, and the testimony of the parties in the hearing.

Preliminary Matter #3

Despite having been advised at the outset of the hearing about the rules of conduct for the proceedings and the consequences of failing to behave appropriately, all parties had difficulty restraining themselves during the proceedings. The parties had to be advised multiple times throughout the hearing not to interrupt or speak over me or one another. Agents and Legal Counsel for the Landlord also had to be advised multiple times to move on from issues that had already been thoroughly covered or were irrelevant to the matters to be decided.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of either of the Notices to End Tenancy?

If one or both of the Notices to End Tenancy are upheld or the Tenant's Applications seeking their cancellation are dismissed, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the Act?

Is the Tenant entitled to recovery of one or both of the filing fees?

Background and Evidence

Although the parties were in agreement that a residential tenancy under the Act exists, they disagreed about the terms of the tenancy agreement and whether a memorandum submitted by the Tenant forms part of the tenancy agreement. Both parties submitted copies of a tenancy agreement which differ from one another as set out below.

The Tenant's copy of the tenancy agreement names the Landlord and the Tenant on the first page, and contains a handwritten notation on the first page, a portion of which is illegible to me, which appears to state that 3 months of free rent and utilities are to be provided and that a Four Month Notice will be required by the Landlord to end the tenancy if demolition is required. The remainder of the tenancy agreement is blank and/or struck through, and is signed by two people on July 25, 2018. A "RESIDENTIAL TENANCY MEMORANDUM" (the Memorandum) was also submitted by the Tenant, which the Tenant states forms part of the tenancy agreement.

The Memorandum states that it was signed by the Tenant and the Chairperson for the organization listed as the Landlord on the tenancy agreement (M.G.), that the house is not in living condition as it needs repairs, that $900.00 in rent is due each month, which includes two parking spaces, and utilities such as water and garbage removal etc. but not electricity, which the Tenant is to arrange and pay for. It also states that the Tenant is to complete many significant repairs to the rental unit at their own cost, such as repairing damage caused by water leaks, repairing a deck, repairing the upstairs portion of the rental unit including the addition of a new deck shade, kitchen, washroom, living room floor, fridge, stove, sink, toilet seat, bathtub and bathtub tiles. A further notation indicates that the Tenant completed the required repairs at a cost of $28,000.00. Finally, the Memorandum states that the Tenant will not be required to vacate the rental unit unless the home is being demolished, at which point the Tenant will be entitled to three months notice.

The chairperson noted in the Memorandum (M.G.) attended the hearing, and both they and the Landlord's Legal Counsel argued that the Memorandum submitted by the Tenant is fraudulent. The Agents and Legal Counsel for the Landlord pointed to the fact

that the Memorandum is not witnessed and that no signature dates are present as support for this position, and submitted a different copy of a tenancy agreement. Their copy of the tenancy agreement has the same first page, but all remaining pages are different. The Landlord's copy states that the month to month tenancy began on February 1, 2018, that $1,000.00 in rent is due on the first day of each month, which includes water, sewer, and garbage collection, and that no security or pet damage deposits were to be paid. Although the last page of the tenancy agreement appears largely to be the same as that submitted by the Tenant, it includes an additional hand-written notation that effective May 1, 2018, $100.00 for utilities is required in addition to the $1,000.00 per month in rent.

During the hearing the parties were in agreement that the Two Month Notice with an effective date of November 30, 2020, is not valid as the Landlord is a not for profit organization and therefore the ground selected on the Two Month Notice, that the Landlord or the Landlord's spouse will occupy the rental unit, does not apply.

The Agents stated that when the Tenant disputed the Two Month Notice, they consulted with the Residential Tenancy Branch (the Branch) and discovered that the Two Month Notice was not the correct notice to be served as the Landlord is a not-for profit organization and they wish for an employee of that organization, a priest, to occupy the rental unit. As a result, the Agents stated that the Four Month Notice was personally served on the Tenant on October 30, 2020. During the hearing the Tenant acknowledged personal service on that date and the Application indicates that the Tenant sought cancellation of the Four Month Notice with the Branch by filing an Application on November 17, 2020, within the prescribed period set out under section 49(8)(b) of the Act.

The Four Month Notice in the documentary evidence before me is signed and dated October 30, 2020, has an effective date of March 1, 2021, and states that the Notice to End Tenancy has been served as the Landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

At the outset of the hearing one of the Agents stated that the Landlord is a not for profit religious association, that the Landlord has employed a priest from abroad to work at the Mosque and religious school located on an adjacent property also owed by the Landlord, and that as the priest has had difficulty securing rental accommodation for themselves and their family since arriving, the Landlord feels that it is their responsibility to find them accommodation as the priest is the Landlord's employee. As a result, the

Agent stated that the Four Month Notice was served on the Tenant so that the priest and the priest's family could occupy the rental unit.

The Tenant and the Tenant's support person agreed that the Landlord wishes to use the rental unit for accommodations for a priest hired by the Landlord to work at the Mosque located on the adjacent property, but argued that the priest is not a manager, caretaker, or superintendent of the residential property on which the rental unit, a single-family dwelling, is located, as their role is restricted to religious prayers and teachings at the adjacent Mosque and religious school. When directly asked by me during the hearing whether the priest will conduct caretaker, manager, or superintendent duties for the residential property, the Agent stated "no, he's not a caretaker, manager, or superintendent, or anything" and that the priests job is to lead prayer and to teach at the Mosque located on the adjacent property.

Upon being reminded what the Act requires under section 49(6)(e) to end a tenancy, Legal Counsel for the Landlord stated that the Agent was mistaken and that the priest is in fact a caretaker of the residential property. The Agent then attempted to retract their previous testimony, stating that they were mistaken and had misunderstood my question. When asked to describe the priest's duties, the Agents repeatedly referenced activities at the adjacent Mosque, such as setting up classrooms, leading prayer, having access to security systems for the Mosque and Mosque property, and issuing receipts for religious donations. Although the Agents and Legal Counsel for the Landlord stated that they have a job description for the priest which indicates that they are a caretaker for the property, no such document was submitted for my review or consideration and the Tenant and their support person argued that it was not submitted as no such document exists.

The Tenant and their support person also called into question the validity of the testimony of the Agents and Legal Counsel for the Landlord that the priest will act as a caretaker for the residential property, stating that the Landlord easily could have called the priest as a witness or submitted a written statement from them asserting that they will be a caretaker, manager, or superintendent for the residential property, which they have not done, as this is inaccurate and the priest, who is a religious leader in their community, would not have lied for the benefit of the Landlord. The Agents and Legal Counsel for the Landlord denied that they are being untruthful and stated that it is for the Landlord, and not the Tenant, to determine the duties of the priest, who is the Landlord's employee.

Although the Agents stated that the rental unit currently occupied by the Tenant was previously used as a priest house, they acknowledged that it was rented to the Tenant as a residential rental unit under the Act.

Both parties submitted documentary evidence in support of their positions, including but not limited to, copies of the tenancy agreements and memorandum, rent receipts, copies of letters and correspondence sent to the Tenant by the Landlord, copies of previous decisions from the Branch in relation to the tenancy, copies of the Notices to End Tenancy which are the subject of this dispute, as well as copies of previous Notices to End Tenancy issued to the Tenant, an affidavit from the Agent M.G. dated December 18, 2020 , and a three page letter to the Tenant authored by the Agent M.G.

Analysis

Although the parties were in agreement that a residential tenancy under the Act exists, they disagreed about the terms of the tenancy agreement and whether a memorandum submitted by the Tenant forms part of the tenancy agreement. Although the parties have been before the Branch in relation to this tenancy on several previous occasions, from the decisions rendered on the file numbers referred to by the parties in the hearing and in their documentary evidence, it appears to me that no findings of fact have previously been made by the Branch with regards to the terms of the tenancy agreement. As stated in the background and evidence section of this decision, the vast majority of the written tenancy agreement submitted by the Tenant is either blank or struck through and contains no details at all regarding the start date of the tenancy, whether the tenancy has a fixed term or is periodic in nature, how much rent is due each month and when, what services or utilities, if any, are included in the payment of rent, and whether a security deposit or pet damage deposit was to be paid.

In contrast, the tenancy agreement submitted by Agents for the Landlord contains all the information required under the Act and the regulations and all of the ordinary details one would expect to find in a tenancy agreement. It states that the periodic (month to month) tenancy began on February 1, 2018, that $1,000.00 in rent is due on the first day of each month, which includes water, sewer, and garbage collection, and that no security or pet damage deposits were to be paid. Although the last page of the tenancy agreement appears largely to be the same as that submitted by the Tenant, it includes an additional hand-written notation that effective May 1, 2018, $100.00 for utilities is required in addition to the $1,000.00 per month in rent.

Although the Tenant argued that the Memorandum covers most of the terms of the tenancy agreement, for the reasons set out below, I do not find that the Memorandum forms a part of the tenancy agreement or an amendment to it. As a result, I do not accept that the Tenant's copy of the tenancy agreement is accurate or that it is a true copy of the tenancy agreement originally entered into by the parties as it contains none of the information that is required by law or would be relevant to the tenancy, such as when the tenancy commenced, how much rent is due each month and on what date, and what is included in the payment of rent. Although the Tenant submitted several rent receipts showing that they paid only $900.00 in rent, the amount set out in the Memorandum, the Agents submitted copies of rent receipts showing that $1,000.00 in rent was paid by the Tenant as well as correspondence and previously issued 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating that the Tenant had not been paying the full amount of rent required under their tenancy agreement.

As a result of the above, I prefer the more complete copy of the tenancy agreement submitted on behalf of the Landlord and therefore find as follows:

- That the periodic tenancy commenced on February 1, 2018;
- That rent in the amount of $1,000.00 is due on the first day of each month, which includes water, garbage, and sewer;
- That all other utilities, including electricity, are the responsibility of the Tenant to arrange and pay for;
- That no security or pet damage deposit was required by the Landlord or paid by the Tenant;
- That the Tenant was to receive three months free rent at the start of the tenancy, or anytime thereafter; and
- That the tenancy agreement states that a Four Month Notice will be required to end the tenancy if/when the Landlord needs or intends to demolish the rental unit.

Although the copy of the tenancy agreement submitted by the Agents also contains a hand-written notation that effective May 1, 2018, $100.00 for utilities is required in addition to the $1,000.00 per month in rent, I do not find that this is the case. Section 14(2) of the Act states that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. As the Tenant disagrees that any such amendment was agreed to, there are no initials or signatures from both an agent for the Landlord and the Tenant beside this notation, and no other documentary evidence has been submitted showing that the Tenant agreed to this amendment, other than a self-authored submission from the Agents stating that they did, I am not satisfied that the tenancy agreement as set out

above was amended to include an additional payment of $100.00 per month for utilities. As a result, I find that rent remains at $1,000.00 per month as set out above, unless the Landlord increases the rent in accordance with Part 3 of the Act.

Having made these findings, I will now turn my mind to validity of the Memorandum submitted by the Tenant. The Tenant submitted a copy of a Memorandum they claim forms part of the tenancy agreement; however, I do not find that this is the case. Neither copy of the tenancy agreement submitted by either party indicates under section 17, or in any other section, that there are any additional terms to the tenancy agreement or that there is an addendum attached to the tenancy agreement which forms part of the agreement. Further to this, I note that the Memorandum was not witnessed, although there is a section for witness signatures, and that no dates for the signatures present or the commencement of the Memorandum are included. Finally, the person who's signature allegedly appears on the Memorandum on behalf of the Landlord personally appeared at the hearing and provided affirmed testimony that the Memorandum is fraudulent and that they did not sign it.

Based on the above, I am not satisfied on a balance of probabilities that the Memorandum is either valid, or that it forms any part of the original tenancy agreement entered into by the parties or a valid amendment to it under the Act.

I will now turn my mind to the validity of the Notices to End Tenancy under dispute in the Applications before me for consideration by the Tenant. As the parties were in agreement that the Two Month Notice is not valid, I grant the Tenant's Application seeking its cancellation and I order that it is cancelled and of no force or effect.

Section 49(6)(e) 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property. Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim, except where a tenant disputes a Notice to End Tenancy served by a landlord, in which case, the burden of proof to establish the validity of the Notice to End Tenancy shifts to the landlord. As a result, I find that the Landlord bears the burden of proof in this matter to satisfy me, on a balance of probabilities, that they intend in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property, if they wish for the Four Month Notice to be upheld.

At the outset of the hearing an Agent stated that the Landlord is a not for profit religious association, that the Landlord has employed a priest from abroad to work at the mosque and religious school located on an adjacent property also owed by the Landlord, and that as the priest has had difficulty securing rental accommodation for themselves and their family since arriving, the Landlord feels that it is their responsibility to find them accommodation as the priest is the Landlord's employee. As a result, the Agent stated that the Four Month Notice was served on the Tenant so that the priest and the priest's family could occupy the rental unit. In the written submissions submitted by the Agents, most notably the three page letter authored by M.G. and the affidavit signed by M.G. on December 18, 2020, M.G. repeatedly states that the rental unit is required for Mosque (Masjid) use. At not point in any of the documentary evidence before me from either party is it indicated that the priest whom the Landlord intends to occupy the rental unit, will be acting as a caretaker, manager, or superintendent for the residential property. In fact, the correspondence indicates that the rental unit is required for Mosque use, not for use by a caretaker, manager, or superintendent, and that the Landlord has sought unsuccessfully to end the tenancy numerous times in the past for various reasons.

When asked directly during the hearing whether the priest will conduct caretaker, manager, or superintendent duties for the residential property, an Agent stated "no, he's not a caretaker, manager, or superintendent, or anything" and stated that the priest's job is to lead prayer and to teach at the Mosque located on the adjacent property.

Upon being reminded what the Act requires under section 49(6)(e) to end a tenancy, Legal Counsel for the Landlord argued that the Agent was mistaken and that the priest is in fact a caretaker of the property. The Agent then attempted to retract their previous testimony, stating that they were mistaken and had misunderstood my question. I do not accept that the Agent was mistaken when they provided the above noted testimony that the priest whom they intend to occupy the rental unit for the purpose of the Four Month Notice, is not a manager, caretaker, or superintended of the residential property, as this affirmed testimony was provided freely by them as a result of a direct question posed to them by me during the hearing. Given the question asked and the answer given, I also do not see how the Agent could reasonably have misunderstood my question and therefore have been mistaken in their response, as they answered my question directly and the answer given was both unequivocal and a demonstration that they had properly understood the question asked, as the answer reasonably accorded with the question asked of them by me.

Further to the above, no documentary evidence was submitted by the Landlord, their Agents, or their Legal Counsel in support of their testimony that the priest will be acting

as a caretaker, manager, or superintendent of the residential property in which the rental unit is located, such as a job description or employment agreement outlining the caretaker, manager, or superintendent duties to be undertaken by the priest at the residential property.

Given the affirmed testimony of the Tenant, the Tenant's support person, and the Agent that the priest is not a caretaker, manager, or superintendent for the property as their duties are restricted to leading religious prayer and teachings at the Mosque, the documentary evidence before me that the Landlord requires the rental unit for Mosque use, and the lack of documentary or other evidence from the Landlord or their Agents to corroborate that the priest will in fact be acting as a caretaker, manager, or superintendent of the residential property, I therefore find that the person the Landlord intends to occupy the rental unit for the purpose of the Four Month Notice is a priest hired to work at the adjacent Mosque, and not a manager, caretaker, or superintendent of the rental unit or residential property.

As a result, I find that the Landlord does not have grounds under section 49(6)(e) of the Act to end the tenancy and I therefore order that the Four Month Notice is cancelled and of no force or effect.

Although the Tenant sought recovery of two separate $100.00 filing fees, I note that the Tenant could have amended their original Application seeking cancellation of the Two Month Notice to include cancellation of the Four Month Notice, at no additional cost. As a result, I decline to award the Tenant recovery of the filing fee for both Applications, and I award them only $100.00 for recovery of one filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Two Month Notice dated October 1, 2020, and the Four Month Notice dated October 30, 2020, are cancelled and of no force or effect. As a result, I order that the tenancy continue in full force and effect, under the terms and conditions set out by me in this decision, until it is ended by one or both of the parties in accordance with the Act.

Pursuant to sections 72(1) and 67 of the Act, I award the Tenant a Monetary Order in the amount of $100.00 for recovery of one $100.00 filing fee. The Tenant is 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.

In lieu of serving and enforcing the above noted Monetary Order, the Tenant is permitted to withhold $100.00 from the next months rent payable under the Tenancy agreement in repayment of this amount, should they wish to do so, or to otherwise recover this amount from the Landlord.

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 11, 2021

Residential Tenancy Branch