



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Island Village Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on January 19, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Notice).

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on or around October 1, 2020. The Notice indicates the landlord is ending the tenancy because she is going to "convert the

rental unit for use by a caretaker, manager, or superintendent of the residential property". The Landlord stated that no permits are required for this work. The Tenant does not dispute this fact.

The Landlord stated that she owns a motel across the street, and this property, although distinct from the motel, has several residential units on it. Some of the residential units on the subject property are for staff accommodation for her motel, some are long term rentals, and some are shorter term rentals. The Landlord stated that there are several buildings; a house, a frame cabins, other small residential buildings, and the cabin unit which this tenant lives in.

The Landlord explained that this property is over an acre, and it requires substantial upkeep to maintain the grounds, and all the buildings. The Landlord stated that around 2 years ago, she lost the caretaker of the property, and since that time the property has become overgrown, and in need of work. The Landlord stated she needs someone to keep up the grounds, deal with rodent issues, and do general maintenance. The Landlord stated she asked this Tenant to perform some of these caretaker duties, but he had no interest.

Both parties agree that the Tenant is currently on a month-to-month tenancy for the rental of his small cabin. The Landlord stated that this is the perfect cabin for her to house a resident caretaker, and she issued this Notice, so that she can convert the unit from its current use (month-to-month tenancy) to a place where her caretaker can live.

The Tenant feels the Landlord could probably use another space on the property to house the residential caretaker, rather than evict him and use his house, but he did not explain how he knew this to be true. The Landlord asserts that all of her other units are currently being utilized, so this is the best unit to convert to use for a caretaker.

The Tenant pointed to an Employment Standards Branch Fact Sheet for Resident Caretakers, and stated that the Landlord's plans for hiring a caretaker do not meet these criteria.

The Tenant also noted that since the Landlord has not had a caretaker for over 2 years, that there is no rush to convert this unit now. The Landlord replied by saying this is exactly why she needs to convert the unit, sooner than later, because it has been so long and the grounds are getting overgrown.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to perform the stated purpose on the Notice.

I find the tenant was duly served with the Notice on October 1, 2020. The Notice was served pursuant to section 49(6)(e) of the *Act* which reads:

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.

First, I note that the Tenant has provided a fact sheet from the employment standards branch regarding what being a “Resident caretaker” entails. However, I note those documents are intended to guide the interpretation of the Employment Standards Act, not this Act. I find this fact sheet is not helpful or instructive on the issue I must decide.

I accept the undisputed evidence and testimony showing that the rental unit is one of many residential buildings on a large lot. I further accept that the Landlord has been without any meaningful caretaker or dedicated maintenance personal for a couple of years, which has led to deferred maintenance. I also accept that the Tenant was offered an opportunity to take on the caretaker duties for this residential property, but since he was not interested in this role, the Landlord proceeded to issue this Notice, and find someone who was willing to keep up the property.

Having reviewed the totality of the evidence and testimony, I find the Landlord has provided a clear and compelling explanation as to why she requires the cabin, and why she needs the cabin to house the onsite caretaker. I note the Tenant has provided no compelling explanation or evidence to show that the Landlord does not require a caretaker, that there are other units which could reasonably be used to house the caretaker, or that the Landlord has ulterior motives. I find the Landlord provided a clear and reasonable explanation as to why she requires a caretaker, and this cabin. I find the Landlord has sufficiently supported the basis for the Notice, that she does not have ulterior motives, and the Tenant's application to cancel the Notice is dismissed, without leave.

The tenancy is ending, under the Notice, as described below.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession. I find the Landlord is entitled to an order of possession based on the effective date of the Notice, which is February 1, 2021.

As the Tenant was not successful with his application, I decline to award him recovery of the filing fee.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **February 1, 2021**, at 1:00 p.m. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: January 19, 2021