



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, LRE, CNL-4M

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 29, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Conversion (the "Four Month Notice") dated September 30, 2020;
- an order restricting or suspending the Landlord's right to enter the rental unit; and
- an order granting the return of the filing fee.

The Tenants as well as the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Four Month Notice.

The Tenants' request for an order restricting or suspending the Landlord's right to enter the rental unit is dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by the 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 the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Four Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2015. Currently, the Tenants are required to pay rent in the amount of \$910.00 to the Landlord on the first day of each month. The Tenants originally paid a security deposit in the amount of \$800.00 to the Landlord, however, the parties agreed that the Landlord has since returned \$400.00 to the Tenants as they had requested above the allowable amount permitted under the *Act*.

The Landlord stated that she served the Tenants with the Four Month Notice on September 30, 2020, with an effective vacancy date of January 31, 2021 by posting it the Tenant's window of the rental unit. The Tenants confirmed having received the Four

Month Notice on October 6, 2020. The Landlord's reason for ending the tenancy on the Four Month Notice is to;

“Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.”

The Landlord stated that rental unit is located next to a commercial self storage property which is owned and operated by the same owner. The Landlord stated that the current caretakers live in a unit located above the office on the commercial property. The Landlord stated that in August 2020 the current caretakers indicated that they would like to retire from their position, however, they wished to remain occupying the unit above the office on the commercial property.

The Landlord stated that she has hired new caretakers, consisting of a couple with a child, who will take over the caretaker responsibilities and are currently in training. The Landlord stated that the new caretakers are required to reside on site to perform their duties. As such, the Landlord is seeking to end the tenancy to the rental property located beside the commercial property which is currently being occupied by the Tenants. The Landlord stated that the new caretakers would move in sometime between February 1 and 15, 2021.

The Landlord also stated the she intends to covert some of the rental property to allow for additional storage of Recreational Vehicles which would generate more income for the commercial business. The Landlord referred to a paragraph she wrote in her documentary evidence in support of the Four Month Notice.

In response the Tenants stated that they feel as though the Landlord served the Four Month Notice in bad faith. The Tenants stated that the rental property is separate from the commercial property. The Tenants stated that it would make most sense to have the new caretakers move into the unit which is currently being occupied by the retiring caretakers. The Tenants expressed that there have been some issues between the parties throughout the tenancy and that the Landlord is seeking to end the tenancy in order to receive higher rent and expand their storage area to increase their profit.

During the hearing, both parties testified and agreed that the rental unit and the unit currently being occupied by the retiring caretakers are comparable 1 bedroom units.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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.

The Landlord served the Tenants with the Four Month Notice on September 30, 2020, with an effective vacancy date of January 31, 2021. The Tenants confirmed having received the notice on October 6, 2020. I find the Four Month Notice was sufficiently served pursuant to Section 88 of the *Act*.

According to subsection 49(8)(b) of the *Act*, a Tenant may dispute the Four Month Notice by making an application for dispute resolution within 30 days after the date the Tenants receive the Notice. The Tenants received the Four Month Notice on October 6, 2020 and filed their Application on October 29, 2020. As such, I find that the Tenants disputed within the 30 day time limit under the *Act*.

The Tenants have applied to cancel the Four Month Notice as they allege that the Landlord is not acting in good faith.

According to the Residential Tenancy Policy Guideline #2 (B)(C) (the “Policy Guidelines”);

C. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, **the onus is on the landlord to establish they are acting in good faith:** *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenants, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the current caretakers who currently occupy the unit above the office on the commercial property have retired from their position as caretakers. The Landlord has provided insufficient evidence to demonstrate that she has hired new caretakers and that the new caretakers are required to move into the rental unit rather than the unit currently being occupied by caretakers.

During the hearing, the Landlord indicated that she intends to convert a portion of the rental property for storage of Recreational Vehicles. As such, I find that the Landlord has provided insufficient evidence to demonstrate that she served the Four Month Notice in good faith.

In light of the above, I cancel the Four Month Notice, dated September 30, 2020. I order the tenancy to continue until ended in accordance with the Act.

As the Tenants were successful, I find they are entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the next month's rent.

Conclusion

The Tenants' Application is successful. The Four Month Notice issued by the Landlord dated September 30, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from the next month's rent for recovery of the filing fee.

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

Residential Tenancy Branch