Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, PSF, CNL-4M

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that landlords make repairs to the rental unit pursuant to section 32;
- cancellation of the One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47;
- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "**Four Month Notice**") pursuant to section 49;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords provide services or facilities required by law pursuant to section 65;

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by CR. A co-owner of the residential property ("**DE**") also attended on behalf of the landlords.

The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the One Month Notice and the Four Month Notice (collectively, the "**Notices**");
2) an order that the landlords comply with the Act;
3) an order that the landlords to make repairs to the rental unit; and
4) an order that the landlords provide services or facilities required by law?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant JM is the former common law partner of landlord TT. EM is the daughter of JM and TT. DE is EM's soon to be ex-spouse. EM and DE are in the process of separating.

Approximately 20 years ago, JM moved into the rental unit (a detached, one story building) located on the residential property. At the time, the residential property was owned exclusively by TT. TT lived on the residential property in another house. JM and TT were already separated at this point. JM paid TT monthly rent. He did not provide a security or pet damage deposit. TT testified that JM was experiencing some hard times, and that she offered to allow him to stay in the rental unit. The parties did not discuss the length of the term.

Roughly 10 years later, EM and DE became co-owners of the residential property. They built a third house on it and moved in.

Currently, JM, TT, EM, and DE all live on the residential property, in three separate houses. The relationship between JM and TT has deteriorated in the last five years, and EM acts as a go-between for her parents. JM gives his monthly rent to EM, who in turn, gives it to TT. Monthly rent is currently set at $250, which JM pays. However, EM retains $50 of it, in trust, as she believes that TT has improperly raised the rent (from $200 to $250 in August 2020). The tenant has not applied to dispute the rent increase, so I will not address this issue further.

The rental unit wastewater is stored in a septic tank. The septic tank has failed and is beyond repair. The parties did not provide documentary evidence as to the cause of the failure, but it may be due to being crushed by a truck driving over the septic field, which was driven by someone who JM invited onto the residential property. The parties did not provide any evidence as to when this occurred.

On September 30 and October 2, 2020, an Environmental Health Officer from Island Health attended the residential property and conducted an inspection and dye test. On October 5, 2020 the officer issued an order pursuant to the *Public Health Act* (the "**Order**") in which he wrote:

> As a result of my inspection, I have reasonable and probable grounds to believe and do believe that [TT, M, and DE] are in contravention of the *Sewer System Regulation* (BC Regulation 326/2004) hereinafter referred to as the "Regulation". This opinion is based on the following:

- A dye test was conducted on the septic system servicing the [rental unit] with fluorescent tracer dye introduced to two toilets in the dwelling on September 30, 2020.

- At the time of the follow up inspection on October 2, 2020 the following was observed:

Tracer dye on the ground surface in the field directly adjacent to the [rental unit].

According to section 3(1)(b) of the Regulation, it is the duty of the owner of every parcel on which a structure is constructed or located to ensure that all domestic sewage originating from the structure does not cause or contribute to a health hazard.

Whereas you have violated that duty, effective upon receipt of this order, I exercise my authority under section 3(1) of the *Public Health Act* and section 11 of the Regulation and hereby order you to:

1. Cease and assist the discharge of sewage on the ground. Cover the contaminated area with soil.

2. Complete construction of a sewerage system which complies with the regulation on or before November 16, 2020. Compliance with this request requires one or more of the following actions to be taken:

    a. Where constructing where construction works requires a filling:

        i. An Authorized Person (EPI), pursuant to Section 7 of the Regulation, is required to submit filing information pursuant to Section 8 of the Regulation to the Health Protection Environmental Services office located at [redacted]. A copy of this order must accompany this filing information at the time of submission.

        ii. Within 30 days of completing the construction and AP must, pursuant to section 9 of the Regulation, file to the Health Protection Environmental Services office located at [redacted].

    b. Or construction work does not require filling, have an authorized person contact this office in writing to confirm works completed to comply with this order.

3. Pump out all domestic sewage, generated by the structure, by a wastewater hauler and habit disposed of at a facility legally authorized to accept it. Have all receipts available for viewing at the request of the health officer.

On October 31, 2020, TT served JE with the One Month Notice. It specified an effective date of November 30, 2020. It listed the reason for ending the tenancy as “rental unit/site must be vacated to comply with a government order”. TT wrote the following details on the One Month Notice:

> Order Issued by V.I.H.A. (October 5/2020) regarding the failed septic system and request to vacate residence so the system can be decommissioned.

TT testified that the environmental health officer told her that she would need to get vacant possession of the rental unit in order to undertake the steps necessary to comply with the Order. TT provided no documentary evidence supporting this testimony (such as correspondence from the officer, or a report from the proposed person who would undertake the repairs).

The tenant disputed the One Month Notice on November 6, 2020.

After issuing the One Month Notice, TT obtained an estimate for the cost of replacing the septic system. It would cost $20,000 plus GST. TT testified that she did not have the funds available to undertake such work.

TT testified that the environmental health officer told her that she would not be required to make the remediations required by the Order, if the rental unit was not occupied and the toilets were decommissioned. Again, she did not provide any documentary evidence corroborating this testimony.

As such, on November 30, 2020, TT served JE with the Four Month Notice. It indicated that the reason for ending the tenancy was because she was going to “demolish the rental unit”. TT did not indicate on the Four Month Notice that she had obtained any of the permits or approvals required to do this work. She described the planned work as “decommission the septic tank. Eventually demolished the rental. ASAP.”

One December 14, 2020, the tenant amended his application to dispute the Four Month Notice.

At the hearing, TT testified that she did not have a planned start date for the demolition. She testified that she could not afford to demolish the rental unit and that she actually just wanted the rental unit vacated so that she would not have to undertake the work required by the Order. TT testified that the rental unit would likely sit vacant until it could be demolished or that she may allow the local fire department to use it.

The tenant argued that the rental unit should not be demolished, as he had spent a lot of time repairing it and making upgrades to it. He testified that, prior to the hearing, he had not been made aware of the landlord's intention not to start the demolition after the end of the tenancy, but rather of

Analysis

1. Identity of Landlords

I must first note that, despite EM being named as a landlord respondent on the tenant's application, she is not a landlord. The landlord/tenant relationship arises when the tenancy agreement is created. New landlords or tenants may be added to the agreement, but there needs to be evidence clearly showing that this occurred. There is no such evidence in the present case.

The Act states:

> "landlord", in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In this case, the tenancy began roughly 10 years before EM and DE became co-owners of the residential property. As such, they could not have been parties to the original agreement. There is nothing in the evidentiary record which would suggest that, once they became co-owners of the residential property, they exercised their powers as landlords or permitted occupation of the rental unit. Even after EM and DE became co-owners, TT continued to exercise her authority as landlord. I accept TT's evidence that she acted as go-between for her parents when their relationship deteriorated. This does not cause her to become a landlord. Rather, I find she was acting on behalf of her mother, as an agent.

As such, EM and DE are not landlords and are not properly named as respondents in this application. I dismiss the application, in its entirety, against EM and DE.

2. Validity of Notices

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, even though this is the tenant's application, TT bears the onus to show that they are valid. For the reasons that follow, I find that the Notices are not valid and should be cancelled.

a. <u>One Month Notice</u>

TT indicated that the reason for issuing the One Month Months was that "the rental unit must be vacated to comply with a government order". I have reviewed the Order and find that it does not require that the rental unit be vacated. Additionally, TT has provided no evidence to corroborate her assertion that vacant possession of the rental unit is necessary to comply with the Order. As such, I find that TT has failed to discharge her evidentiary burden to prove that the tenancy must be terminated due to a government order. I therefore find that the One Month Notice is invalid and of no force or effect.

b. <u>Four Month Notice</u>

Section 49(6) of the Act states:

> **Landlord's notice: landlord's use of property**
> (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:
> (a) demolish the rental unit;

Policy Guideline 2B states:

> The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.
>
> "Permits and approvals required by law" can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in

> zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. […]
>
> If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

TT did not provide any permits relating to the demolition of the rental unit and did not provide any evidence which suggests permits are not required to do the demolition. As such, TT has failed to prove that she has the necessary permits to demolish the rental unit.

Additionally, based on the testimony of TT, it appears that her primary motive for issuing the Four Month Notice was not so that the rental unit could be demolished, but rather so that she would not have to comply with the Order or so that it could remain vacant. The ulterior motive suggests that the Four Month Notice was not issued in good faith, as required by section 49(6).

Policy Guideline 2B states:

> 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 tenant, 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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

For the preceding reasons, I find that the Four Month Notice is invalid and of no force or effect.

3. Repairs, Provision of Services and Facilities, and Order that the Landlord Comply with the Act

These three portions of the tenant's application amount to the tenant seeking the same relief three different ways: the repair or replacement of the septic system.

Unlike the portion of the application relating to the Notices, the tenant bears the evidentiary burden to prove the facts submitted in support of this part of the application (see Rule 6.6 above).

I first note that I do not understand that the issues with the septic system have in any way decreased the livability of the rental unit. There is no evidence before me to suggest that the toilets, drains, or other parts of the rental unit plumbing do not work. As

such, if the tenant is being denied any services or facilities. He is still able to use all of the plumbing systems. The trouble lies not with the facilities provided to the tenant, but rather the effect the use of those facilities has on the surrounding land.

The parties agree that the septic system is broken and needs repair or replacement. However, the cause of the damage to the septic system has not been established. The parties provided only vague testimony as to the cause of the damage, with the prevailing, unsubstantiated, thought being that the septic tank was crushed by a truck driven onto the septic field by an invitee of the tenant.

Section 32 of the Act, in part, states:

> **Landlord and tenant obligations to repair and maintain**
> **32**(1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> […]
>
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In brief, a landlord is not responsible for repairing damage caused (or permitted to be caused) by a tenant. As such, the tenant must prove it is more likely than not that he did not cause the damage to the residential property. Based on the evidence before me, I find that the tenant has failed to do this.

There is no documentary evidence (such as an expert report) which addresses the cause of the damage to the septic field. However, both parties agree that, at some point, someone the tenant allowed to come onto the rental property drove their truck on the septic field. I cannot say whether this would cause the damage to septic system or if it did, that the damage would result in the findings discovered by the Environmental Health Officer and recorded in the Order. However, in the absence of a plausible alternate explanation, I find that this action likely caused such damage.

As such, I find that the tenant has failed to discharge his evidentiary burden to prove it is more likely than not that the items in need of repair or replacement were not damaged by him or someone he allowed onto the rental property. As such, the landlord is not obligated to repair the septic system pursuant to section 32 of the Act.

Similarly, the landlord is not in breach of the Act by failing to repair or replace the septic system. As such, I cannot grant an order that the landlord comply with the Act.

As such, I dismiss these three portions of the tenant's application, without leave to reapply.

For added clarity, nothing in this decision does anything to relieve TT, EM, or DE's obligation to comply with the Order. The scope of an arbitrator's authority does not extend to the *Public Health Act* or the *Sewer System Regulation.*

Conclusion

I order that the Notices are cancelled and of no force or effect. The tenancy shall continue.

I dismiss the tenant's application for an order that the landlords make repairs, provide services or facilities, or comply with the Act, without leave to reapply.

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: February 10, 2021

Residential Tenancy Branch