



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFL

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord, the tenant and the landlord's builder attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The builder acted as translator and agent on behalf of the landlord.

Both parties agree that the landlord was personally served with the tenant's application for dispute resolution on December 18, 2020. I find that the landlord was served in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and is currently ongoing. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The builder testified that a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit was posted on the tenant's door on December 8, 2020 (the "Notice"). The Notice has an effective date of April 8, 2021. The tenant testified that he received the Notice on December 8, 2020.

Both parties agree that they had a previous arbitration to cancel a previous Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated December 18, 2019. The file number for the previous decision is on the cover page of this decision. The previous decision was entered into evidence. The previous decision cancelled the December 18, 2019 Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit because the landlord did not have all the necessary permits for the planned renovation.

Both parties agree that the landlord lives in the upper portion of the house and that the basement is divided into three different suites. The tenant lives in one of the three basement suites. The landlord testified that the tenants of the other basement suites have already moved out.

The builder testified that someone complained to the City about the “illegal” basement suites at the subject rental property and that in October of 2019 the City sent the landlord a compliance letter which required the landlord to bring the property into compliance with the City bylaws. This letter was not entered into evidence, but the previous decision states:

The landlord testified that he served the Notice, as he intends to renovate the plumbing, electrical, subfloors and walls in the rental unit which are required to be opened to incorporate the plumbing and rewiring in order to comply with a city notice.

The landlord testified and submitted into evidence a copy of the municipality’s compliance notice dated October 25, 2019. The landlord testified that the repairs were so extensive that the tenant was required to move out as contractors will carry out major work and renovations on the rental unit. The landlord confirms that he does not have the permits in place to commence the renovations.

The builder testified that the City required the landlord to combine the three basement suites into one legal suite. The builder testified that the landlord has hired him to complete the major renovations which include structural changes to the property, removal of all drywall, restructuring of walls, addition of fire separation between the units, replacement and change to the electrical and plumbing systems throughout. The builder testified that it will take approximately one year to complete the renovations.

The builder testified that the landlord has now received the required permit for the above work. The landlord entered into evidence a building permit with the following relevant information:

- This permit has been issued for the construction of: Interior and Exterior Alterations, New Deck Covers, and **New Secondary Suite** to ESFD
- Issue Date: December 04, 2020
- Expiry Date: June 04, 2021
- Permit Type: Building Permit (Residential)
- Work Proposed: Alteration
- Building Use: Single Family – 110

- **Secondary Suite: Yes**

[emphasis added]

The landlord also entered into evidence the Build Permit Plan (the “plan”) which shows all the approved work to be completed on the property. The plan contains drawings of the “proposed cellar plan” which is the work to be completed in the basement. The plan has been stamped by the City in question.

The tenant testified that he is challenging the Notice because the landlord did not give him a timeline of events, when the project was to start, and when it was to finish. The tenant testified that the landlord has had roommates in the past and that one of the rooms is available and that he would like to move into it while the renovations are being completed and then he would move back into the basement suite.

The builder testified that the landlord will also not be able to reside at the subject property throughout the renovations given the structural changes required between the main floor and the basement. The builder testified that the landlord is not interested in having the tenant as a roommate.

The tenant testified that he believes the landlord is just trying to get rid of him and that the renovations are not as extensive as stated by the landlord.

Analysis

Section 49(6)(b) 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Necessary permits and approvals required by law

Residential Tenancy Policy Guideline 2B states:

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law

before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

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.

The landlord entered into evidence a building permit for a “new secondary suite” and drawings of that suite. I find that the landlord has provided all the necessary permits and approvals required by law.

Good faith

Residential Tenancy Policy Guideline 2B states:

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 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....

I find that the landlord has proved that they received a compliance letter from the City in question and that this eviction stems from the landlord’s attempt to comply with that letter. I find that the landlord is acting in good faith.

Vacant possession

Residential Tenancy Policy Guideline 2B states:

Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will:

- make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or
- result in the prolonged loss of an essential service or facility (e.g., the electrical service to the rental unit must be severed for several weeks).

I accept the testimony of the landlord's builder that gutting three basement suites and turning them into a single secondary basement suite would require vacant possession as all the drywall, electrical and plumbing would need to be redone as well as major structural changes. I find that these changes will result in the prolonged loss of essential services including electrical and plumbing.

I find that the landlord is under no obligation to ask the tenant to be a roommate. I accept the builder's testimony that the landlord will not be able to reside at the property while the structural changes are being made. I find that the building permit and drawings prove, on a balance of probabilities, that the scope of the work requires vacant possession for an extended period of time. I find that a detailed written timeline is not necessary to come to this conclusion.

Pursuant to my above findings, I uphold the Notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 49(2)(b) is April 30, 2021. I find that the corrected effective date of the Notice is April 30, 2021.

I find that the Notice conforms to the form and content requirements of section 52 of the *Act*.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that since the Notice complies with section 52 of the *Act* and the Notice was upheld, the landlord is entitled to an Order of Possession effective April 30, 2021.

As the tenant was not successful in this application for dispute resolution I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on April 30, 2021**, which should be served on the tenant. Should the tenant 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 *Residential Tenancy Act*.

Dated: March 08, 2021

Residential Tenancy Branch