



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, OLC, FFT**

Introduction

This hearing, reconvened from an earlier adjourned hearing, dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 4 Month Notice to End Tenancy for Demolition of the rental unit;
- An order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received and have had an opportunity to review the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 4 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Should the landlords be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2018. The current monthly rent is \$4,300.00 payable on the first of each month. A security deposit of \$2,150.00 was paid and is still held by the landlord.

The landlord issued a 4 Month Notice to End Tenancy dated December 23, 2020. The reason provided on the Notice for the tenancy to end is that the landlord intends to demolish the rental unit and have obtained all permits and approvals required by law to do this work.

The tenants filed their application to dispute the 4 Month Notice on December 30, 2020. The tenants say that the portion of their application seeking an order of compliance pertains to the validity of the notice.

There have been two previous hearings regarding this tenancy under the file numbers on the first page of this decision. The hearing for September 27, 2019 pertained to the tenants' dispute of a rent increase and a determination that a clause in the tenancy agreement requiring the tenants to vacate the rental unit at the end of the initial fixed-term was in violation of the *Act*. The dispute resolution hearing of December 10, 2019 pertained to the tenants' application to dispute the landlord's 2 Month Notice to End Tenancy for Landlord's Use.

The tenants submit that they disbelieve the good faith intention of the landlords in issuing the present Notice to End Tenancy due to the history of disputes with the landlords and their persistent attempts to take possession of the rental unit.

The landlord testified that they have exhausted other options to take possession of the rental unit and have issued the present 4 Month Notice to demolish the rental unit based on recommendations from realtors. The landlords presently reside in a neighbouring property. The landlords gave evidence that they intend to demolish the rental unit, build a new building on the site, move into the newly constructed building and sell their present residence. The landlords submitted into evidence documentary evidence including their contracts with third-party construction companies, municipal permits and applications detailing the nature of the demolition work.

As detailed in their written submissions, the rental property was originally registered to the landlords' parents. The landlords testified that the original intention was for their elderly parents to take possession and reside in the rental unit. The parents passed away and the property was bequeathed to the landlords and their siblings. The landlords and their siblings entered into discussion regarding the use of the rental property and the landlords issued an earlier 2 Month Notice to End Tenancy for Landlord's Use when they intended to occupy the rental unit. The tenants successfully disputed the 2 Month Notice and the tenancy continued.

The landlords submit that during the subsequent year they have explored the possibility of selling the rental property but have been unsuccessful in finding an appropriate purchaser. The landlords called their realtor as a witness who testified that the past year has been a challenging market for residences of the size, value and nature of the rental unit. The realtor testified that they have advised the landlords that the specific design of the rental unit makes it unappealing to potential purchasers and they would have greater chances of selling a property with a different building. The landlords provided into documentary evidence written statements from other realtors advising on how a different building on the site would increase the chances for sale of the subject property.

The landlords submit that they intend to demolish the existing rental unit, build a new house on the site and to occupy it themselves. The landlords submitted into evidence municipal permits and applications for the demolition work and plans for a new building they intend to have constructed. In their written submissions the landlords write that the new building which will be constructed "will fit their retirement and physical needs, which is something neither the existing [rental property] nor [their present residence] can satisfy".

The landlords testified at multiple points during the hearing that they have chosen the course of demolition and rebuilding after failing to obtain possession or to successfully sell the rental property. The landlords characterized the present plans as "their last resort". The landlords submit that they have incurred considerable expenditure to prepare for the demolition and construction.

Analysis

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property where the landlord intends to demolish the rental unit, the

tenant may, within 30 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 4 Month Notice was received on or about December 23, 2020 and the tenants filed their application for dispute resolution on December 30, 2020. I therefore find that the tenants are within the time limits provided under the Act to dispute the 4 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the notice on a balance of probabilities. In the present circumstance the landlord issued the 4 Month Notice stating that they intend to demolish the rental unit.

The tenants dispute the good faith intention of the landlords and point to the previous attempts made to end this tenancy.

The landlords submit that they have obtained necessary municipal permits for the intended work, have incurred significant financial expenditures and have every intention of demolishing the rental unit.

Residential Tenancy Branch Policy Guideline number 2B notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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.

The tenants raise the good faith intention of the landlords which I find has some basis. In the present case the 4 Month Notice follows other dispute resolution hearings and a previous notice issued by the landlords attempting end the tenancy in 2019. While there is a span of a year between the dispute resolution decision dealing with the previous notice and the issuance of the present notice, the landlords gave testimony that the present notice is issued as a result of the failure of previously obtaining an Order of Possession.

I accept that over the span of a year the landlords made various plans for the rental unit including; to personally occupy and reside in the unit giving rise to the issuance of an earlier 2 Month Notice, selling the rental property for which they engaged a realtor and sought advice on how to maximize the potential sales proceeds, and now stating that they intend to demolish the rental unit and build a new house on the site. The landlords testified that they intend to occupy the new house that will be built on the rental unit site.

I find that viewed in its entirety the landlords' explanation of their intention for the property lacks consistency. While I find there is sufficient documentary evidence by way of the municipal permits and construction contracts that the landlord does intend to carry out the intended demolition of the rental unit, I am unconvinced that the work is not fuelled by ulterior motivation.

I find the landlord's present submission that they intend to demolish the rental unit and occupy a new house built in its place to be at odds with the testimony and written statements of their own witnesses who state that the reason for demolition and rebuilding is to maximize the sale potential of a new building on the site.

While the landlords provided some statements that their plan was to first occupy the newly built building on the rental property and subsequently sell it when the market conditions were optimal, I find their attempts to reconcile the different purposes to be unconvincing.

The landlords' submissions include a statement that, "The Landlord has multiple rental properties". The landlord did not address why, if they own multiple rental properties, it was necessary to raze the rental property and build a new structure to occupy instead of simply occupying one of their other rental properties.

The landlord made some reference to how a new custom-built home would meet their lifestyle and physical needs but provided little information on how the intended structure would be more appropriate for their requirements or what deficiencies are present in their present residence or the existing rental unit.

I find insufficient evidence in support of the good faith intention of the landlords. I find that while there is some evidence supporting their intention to demolish the existing rental unit, their own evidence and submissions provides contradictory information about why such work is required. Most notably I find the landlord's own testimony stating that "[They] have taken this approach as a last resort having exhausted their other options" to be indicative that the present course of action is taken as a result of earlier, unsuccessful attempts to obtain an Order of Possession.

The landlords have provided multiple reasons for ending this tenancy and their motivation for demolishing the existing rental unit. While I accept that the reasons provided by the landlord are not mutually exclusive and may be performed sequentially, I find the sheer number of reasons provided for ending this tenancy over the course of 3-years to give rise to considerable doubt about the good faith intentions of the landlords.

The landlords initially sought to enforce a vacate clause in a fixed-term tenancy, then issued a 2 Month Notice stating they would occupy the rental unit, listed the property for sale, and now submit that the property must be demolished. I find the landlords' explanation of why they contemplated each option at the relevant time and how their present course of action is not fuelled by ulterior motives to be unconvincing given the multiple attempts made in a short period to end this tenancy.

I do not find the landlords' position that they have incurred financial costs to be necessarily indicative of their good faith intention. While I accept that the landlord may wish to demolish the rental unit I find that evidence of payments are not sufficient to establish that there are no other factors fuelling the landlords' intended project.

I find on a balance of probabilities that the intention and motivation of the landlords is to end this tenancy and gain possession of the rental property and that any plans for demolition of the rental unit, erecting a new building or the disposition of the property are secondary concerns.

Therefore, as I am not satisfied with the good faith intentions of the landlords in issuing the 4 Month Notice, I allow the tenants' application and cancel the Notice. This tenancy will continue until ended in accordance with the *Act*.

As the tenants' application was successful they are entitled to recover their filing fee from the landlords. As this tenancy is continuing I allow the tenants to make a one-time deduction of \$100.00 from their next scheduled payment of monthly rent in full satisfaction of this monetary award.

Conclusion

The 4 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants may make a one-time deduction of \$100.00 from their next monthly rent payment.

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: April 12, 2021

Residential Tenancy Branch