Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice", “Notice to End Tenancy”, or “Notice”) pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended (“the tenants”). The landlord attended with the lawyer DOB (“the landlord”). As both parties were present service was confirmed. The parties each confirmed receipt of the other’s materials. Service details were discussed. After discussion, the parties each agreed service upon them complied with the Act. All objections to service were waived. Based on the testimonies, I find that each party was sufficiently served with the respective materials in accordance with sections 71, 88 and 89 of the Act.

The parties were instructed that no recording of the hearing was permitted.

Preliminary Issue - Multiple Remedies

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenants' application included an unrelated claim in addition to the application to dispute the landlord's Notice. I find that the tenants' primary application pertains to disputing the Notice to End Tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenants' claims, except for the tenants' application to dispute the landlord's Notice to End Tenancy and obtain reimbursement of the filing fee, are dismissed with leave to reapply.

I make no findings with respect to these claims. I grant the tenants liberty to reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

Burden of Proof

Section 49(6) of the Act provides that upon receipt of a Notice to End Tenancy the tenant may, within thirty days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If a tenant disputes a notice by the 30-day deadline, the notice is suspended until an Arbitrator hears the application. A tenant must move out within four months of receiving the notice if they do not dispute it.

If the tenant files the application, the landlord bears the burden to prove they have valid grounds to terminate the tenancy. The Rules of Procedure set out the standard of proof and onus of proof as follows:

> ***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.*

Therefore, in this case, the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Issues

Is the tenant entitled to the following:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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 submitted many documents as well as considerable disputed testimony in a 131-minute hearing.

The background facts are generally acknowledged. The unit is a house, garage, and outbuildings (“the unit”) located on a part of an acreage. The remainder of the acreage not occupied by the tenants is agricultural land farmed by a third party who leases from the landlord. The tenants submitted an aerial map of the property indicating the location of the leased buildings forming part of the unit and the separate farmed section.

The parties signed a tenancy agreement which started July 1, 2015 and included “storage”. Originally for a fixed term of 2 years, the lease is now monthly. Rent is now $1,200.00 monthly. There are no arrears of rent. During much of the tenancy, the relationship between the parties was cooperative and friendly.

This changed when the landlord presented the tenants with a letter signed by him, a copy of which was submitted, stating the tenants would move out in two years, on August 4, 2021. The letter stated in part:

> *Please indicate you have received and understand this notice by your signature.*

The tenants testified that the landlord told them they if they did not sign, he "would go ballistic"; they claimed they signed the letter "under duress". The tenants asserted that their signature was an acknowledgement of receiving the letter and was ***not*** an agreement to move out. The landlord asserted the letter was a binding commitment by the tenants that they would move out in August 2021.

The letter is referenced as the "August 4, 2020 letter".

The tenants testified they have never agreed to move out and continue to this day to want to remain in the unit. Nevertheless, they stated they decide to look for accommodation elsewhere and asked the landlord to sign a reference letter for them. The reference letter included the following:

> *The only reason our agreement is ending is I am tearing down the house and building myself a new one on the property.*

The landlord refused to sign the letter unless there were changes to the above statement. The tenants stated that this led them to believe that the landlord was not being forthright with them about why he wanted them to move out. They suspected the landlord had other plans which were not being revealed to them. They testified that they do not understand why they are being evicted.

On January 21, 2021, the tenants applied for dispute resolution. Their claim included a cancellation of any move-out requirement in the August 1, 2020 letter.

The parties agreed the landlord then issued a Four Month Notice in the RTB form which was served upon the tenant on February 12, 2021 with an effective date of June 30, 2021. This is the Notice that is primarily the subject of the tenants' application at this hearing.

The tenants submitted a Request to Amend a Dispute Resolution Application on March 10, 2021 requesting a cancellation of the Four Month Notice.

A copy of the Four Month Notice was submitted as evidence. There are two reasons given in the Notice for the issuance. The first checked selection is that the landlord intended to “demolish the rental unit”; the second selection was that the landlord intended to “convert the rental unit to a non-residential use”. The landlord checked the box stating that “no permits or approvals are required”. This box was checked.

The Notice provides details of the Planned Work as follows:

> *Planned Work*
>
> *The rental unit is being converted to a storage unit for equipment used in the current and future farming and orchard operations on the property. No other building is available on the property for this purpose as the current storage structure is being demolished.*
>
> *Details of work*
>
> *Conversion of the unit to storage will entail the removal of certain bathroom fixtures such as toilets, and the removal of certain kitchen fixtures such as stove/oven. The removal of these fixtures will necessarily make the unit unfit for residential purposes.*
>
> *The unit is ultimately being demolished to accommodate the construction of a new residence on the property.*

The landlord provided considerable oral and supporting documentary evidence as to his intentions. The landlord’s documents included a written summary by the landlord’s lawyer.

The landlord explained that he planned to retire. He stated that he is the owner of a separate property where he has a house in which he lives (“the landlord’s house”). The landlord’s house will be sold in July 2021, and the landlord will lease back the house for the three following years and continue to live there.

Once the landlord’s house is sold, the landlord testified that he intended to start a “transition” to the acreage which included the unit. This process will take place over “one to three years”. The landlord intended to start moving equipment and possessions to the unit and to convert the house in which the tenants live to a storage building. The landlord testified that a third party is currently farming the acreage and he will, in time,

take this over and run to the farm on a day to day basis. The time frame when this will take place has not been set.

The landlord testified that he confirmed with the District that a permit is not required to convert the unit to a storage building. The landlord did not provide a copy of any supporting documentation from the District. The landlord stated as follows:

> *[The landlord] was advised by the [District] that they would require demolition of the residence within one year after an occupancy permit has been obtained for his new residence on the property. The District has also advised that during the interim he may convert the existing residence into a temporary storage building. No permits are required for this temporary use. [the landlord] must de-commission the residence by removing certain kitchen appliances and bath fixtures. The conversion of the residence to lockable storage is useful and convenient to [the landlord] as he moves expensive equipment and materials onto the property for the installation of an orchard and eventually to build the new residence. No persons can reside on the Subject Property while the residence has been converted to a temporary storage building.*

As part of his transition plan, the landlord testified he intended to build a house on the acreage. The start date is uncertain. The landlord stated he has not yet applied for the necessary permits to start construction and no approvals/permits have been obtained. In the landlord's written submissions, he stated:

> *[The landlord] will eventually demolish the structure around the time that he completes construction of a new residence on the property.*

The tenants stated that do not believe that the landlord intends to convert the house to a non-residential storage unit or build a house in the timeline to which the landlord testified. They believe the landlord intends to rent the property to someone else or to sell it. They testified as to their belief the landlord had shown their unit to a prospective renter while they were away and without proper notice. The landlord denied these statements and in his written submissions stated that "no persons whatsoever will be residing on the property until completion of the new residence".

The tenants asserted that the landlord's true intentions are not honestly revealed, and the Four Month Notice was issued in bad faith. They asserted that the issuance of the Four Month Notice is a subterfuge to obtain control of the unit without complying with the Act.

In support of their position, the tenants stated as follows. Throughout the tenancy, the acreage has been farmed by a third person (namely, A.D.); this person has informed the tenants that the third party's lease on the acreage has recently been extended for another five years. The landlord has not been involved in the farming operation to any significant degree.

As well, the tenants testified that the landlord just destroyed a large, serviceable storage building. They explained the background as follows. The use of the building was included in their tenancy agreement. Throughout the tenancy, the tenants stored equipment and possessions there.

However, the tenants testified the landlord instructed them to stop using the storage building in March 2020 and to remove their possessions. The landlord said he intended to demolish the building. Accordingly, they moved their belongings out. The storage building remained empty for 6 months and then was destroyed by the landlord in March 2021. The tenants have brought an application for compensation for loss of the storage building.

The tenants asserted that it makes no sense for the landlord to destroy a usable storage building and then claim that he needs a habitable, income-generating house (their home and the unit) for storage. In their written submissions, the tenants stated (as written):

> *As per Converting the rental to a non residential use and using the House as a storage unit, since [landlord] leases the orchard/land and the asparagus field, is he now providing a storage unit to the leases? [that is, A.D.]. This is not allowed as per the RTA. [The landlord has not actively farmed the property since we rented in July of 2015 and has never stored equipment on the property.*
> *[…]*
>
> *The only piece of equipment used on the property by [the landlord] since July 2015 has been a tractor with a mower behind to cut the tall grasss in the asparagus field. This is done 2 or 3 times a year. Neither the tractor or the mower would fit inside the house without extensive renovations to the home, which a permit would be required. Again, we believe [the landlord] is noto acting in Good Faith.*

The landlord denied that the storage building was included under the agreement which did not specify which storage building was included in the unit. He testified that at an unclear time during the tenancy, he told the tenants they could use it.

The tenants asserted that, as acknowledged by the landlord, he planned to continue living in his current home; therefore there was no need for him to move possessions to the acreage even if he planned to build a home, which they doubted. They expressed bewilderment and surprise that the landlord planned to use their home for storage and then destroy it.

The landlord denied the tenants assertions. He claimed he required the unit for storage as part of his long-term plan to build a house and take over the farming operations. The landlord acknowledged that another party was farming the acreage now but denied any such 5-year term with the farm lessee as claimed by the tenants.

In summary, the tenants testified the landlord has issued the Four Month Notice in bad faith, without the necessary permits/approvals, and either intends to lease the unit to someone else or to sell it. They asked that the Notice be dismissed and the tenancy continue.

The landlord requested an Order of Possession.

Analysis

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the tenants credible, well-prepared, and sincere. They were persuasive, calm, and forthright.

In assessing the landlord's testimony, I found the landlord less direct and convincing. I find that his evidence was not sufficient or compelling. I find that I doubt the credibility of the landlord's testimony overall and that this doubt has led me to question the validity of his claims about his intentions for the unit.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenants' account and assessment of events; where the evidence of the parties' conflicts, I prefer the tenants' version of events. I give the tenants evidence greater weight.

August 4, 2020 Letter

The landlord asserted that the tenants agreed in signing the August 4, 2020 letter that they would move out. I find the August 1, 2020 letter was not in the required form under the Act to give a tenant notice to vacate. I also find the signatures of the tenants in the circumstances to which they testified, and which I found credible, do not amount to consent to move out but are merely an acknowledgement of receiving the letter.

Accordingly, I find the August 1, 2020 letter is of no effect and does not amount to a promise by the tenants to move out. I find the issuance of the Four Month Notice was an attempt to remedy the procedural defects in the Notice and I will now turn to a consideration of the Four Month Notice.

The Four Month Notice

When a tenant applies to dispute a Notice to End Tenancy issued under section 49(6)(b) of the Act, the burden of proof is on the landlord. The landlord must show, on a balance of probabilities, that the tenancy should end for the reason stated on the Notice.

Section 49(6) of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to take any of the actions described in the section, including to ***demolish the rental unit*** or ***to convert the rental unit to a non-residential use*** before the notice is given to the tenant.

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

Section 49(6) states as follows:

> *(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;*
> > *(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.

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

[emphasis added]

Permits and Approvals

The requirement that the landlord must provide evidence of the required permits or approvals is discussed in the *Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*. The Guideline states, in part:

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. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice.

> *If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.*
>
> *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.*
>
> *Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.*
>
> *A landlord cannot end a tenancy for non-residential use to leave the rental unit vacant and unused.*
>
> (emphasis added)

The landlord asserted that either converting the unit to a non-residential use or demolishing the unit, required ending the tenancy. They argued that the Notice is allowed by law at the time that Four Month Notice was issued, and no permit is required.

However, the landlord has submitted no supporting evidence in support of this assertion. I find the landlord has not met the burden of proof in the unsupported assertion that no permits are required to carry out the proposed us of the building, particularly the demolition.

For these reasons, I find the landlord has not met the burden of proof in this regard to this aspect of the landlord's claim.

Good Faith

The onus is on the landlord to establish that the Notice was issued in good faith. The Guideline 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.

The Guideline states in part:

> *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.*
>
> …
> *If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.*
>
> *When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.*
>
> *The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The tenants have called the good faith intent of intent of the landlord into question. I have considered the credibility of the parties and their testimony, including the acknowledgement by the landlord of the recent destruction of a serviceable storage unit. I find the landlord has not convincingly explained why, when a serviceable storage building was recently destroyed, he nevertheless needs the tenants' home for storage. I

am in doubt that the landlord intends to farm the acreage and requires the unit for storage.

Considering the evidence in its totality, and on a balance of probabilities, I find that the landlord has not met the burden placed on the landlord to establish that they truly intend to do what they said on the Four Month Notice, that they do not have another purpose, and they do not have an ulterior motive for ending the tenancy.

As I find that the landlord has not adequately met their evidentiary onus on a balance of probabilities, I allow the tenants' application and order that the landlord's Four Month Notice is cancelled and is of no further force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I grant the tenants reimbursement of the filing fee of $100.00 which they may deduct from rent on a one-time basis only.

Conclusion

The tenants' application is granted, and the Four Month Notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

The balance of the tenants' claims are dismissed with 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: April 19, 2021

Residential Tenancy Branch