DECISION

Dispute Codes CNL-4M-MT

Introduction

This hearing dealt with applications from the corporate landlord and the tenants pursuant to the *Residential Tenancy Act* (the "*Act*").

The corporate landlord named the tenants MB and JA as respondents and applied for:

- An order of possession pursuant to section 55 of the Act.

The tenants named the personal landlord AD as the respondent and applied for:

- More time to file their application to cancel the 4 Month Notice to End Tenancy for Demolition pursuant to section 66; and
- Cancellation of the 4 Month Notice to End Tenancy for Demolition pursuant to section 49.

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 corporate landlord was primarily represented by its agent CR (the "Landlord"). The tenants represented themselves with the assistance of an advocate.

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.

The Landlord provided evidence that they had served each of the named respondents with their application and evidentiary materials by registered mail sent on February 19, 2021. The landlord submitted into evidence copies of the Canada Post receipts and tracking information as evidence of service. The tenants confirmed that they had been served with the landlord's application and materials. Based on the evidence I find the tenants duly served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Service of Tenants' Materials

Section 59(3) of the *Act* and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

The tenants filed their application for dispute resolution on February 4, 2021. Both the personal landlord and corporate landlord disputed that they were served with the tenants' application. The tenant MB testified that they had not served the landlords with their materials. The tenant explained that they assumed the landlords were duly served as they received the Landlord's application for dispute resolution filed February 12, 2021 and the Landlord's evidentiary materials which they believed to be in response to their application.

The tenant also submitted to the Branch on the hearing date an additional package of evidence which included a request to amend their application to add new claims. The tenant again confirmed that they had not served nor attempted to serve either of the landlords with these materials.

Based on the undisputed evidence of the parties, including the tenant MB's own testimony, I find that the tenants have not served either of the landlords with their application for dispute resolution or their evidentiary materials in accordance with the *Act* or at all. Accordingly, I dismiss the tenants' application in its entirety as I am not satisfied that the landlords were served with the tenants' application for dispute resolution.

Rule 3.15 sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. I accept the tenants' position that the tenants' subsequent package of evidence was not served on either of the landlords within the timelines prescribed by 3.15 of the Rules or at all. I find that the tenants did not provide any cogent or reasonable explanation of why they had neglected to serve the landlords in accordance with the Rules. I find that consideration of evidence that was not provided to the other party would result in unreasonable prejudice to the landlords and result in a breach of the principles of natural justice and procedural fairness. As such, I exclude the tenants' documentary evidence from this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

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 rental unit is property on a parcel of land currently owned by the corporate landlord. The corporate landlord is the municipality in which the property is located. The tenants have been residing on the rental property since 2019. The tenants submit that there was a tenancy agreement between the personal landlord AD and the tenants, MB and GC. The monthly rent was $1,600.00 payable on the first of each month.

The personal landlord AD issued a 4 Month Notice to End Tenancy for Demolition dated September 29, 2020 naming the tenants MB and JA. The reason provided on the Notice for the tenancy to end is that the landlord intended in good faith to demolish the rental unit. A copy of the Demolition Permit from the municipality dated September 29, 2020 was issued together with the Notice.

The landlords submit that the 4 Month Notice was served on the tenants by hand delivering to the tenant JA on September 30, 2020. The landlord submitted into evidence a Proof of Service form signed by the tenant JA confirming they were duly served. The tenants submit that the 4 Month Notice is invalid as it does not name GC as a tenant and they believe they were not served properly, as the Notice was only provided to the tenant JA.

The property was subsequently sold by the personal landlord AD to the corporate landlord sometime in October 2020. Both the personal landlord and agents of the corporate landlord testified that the purchase and sale of the property included assuming the existing tenancy and the Notice to End Tenancy that had been issued. The Landlord testified that they had an interest in the land on which the rental building sits and intend to demolish the rental unit in accordance with the 4 Month Notice.

The parties agree that the tenants paid the monthly rent in the amount of $1,600.00 for the months of November and December 2020 to the corporate landlord. The tenants withheld the rent for the month of January 2021 in accordance with section 51(1.1) of the *Act*. The landlord submits that the tenants were made aware that the 4 Month

Notice issued by the personal landlord remained in effect and they intended to take possession of the rental unit for the purpose of demolition.

The tenants submit that they believed a new tenancy agreement was entered in November 2020 when they began paying the full monthly rent to the corporate landlord. They submit that they believed that the 4 Month Notice was no longer in effect as a new landlord had assumed the tenancy. The tenants did not provide a cogent explanation of why they withheld the monthly rent for January 2021 if they believed that the 4 Month Notice was of no effect.

The parties agree that the tenants arranged for some moving trucks prior to the effective date of the notice but subsequently failed to vacate the rental unit by the corrected effective date of the 4 Month Notice, January 31, 2021. The tenants then filed their application to dispute the 4 Month Notice on February 4, 2021. The tenants have failed to pay any rent for the months of February, March, April and May 2021.

Analysis

Section 49(6)(a) of the *Act* provides that a landlord may end a tenancy if they have all the necessary permits and approvals required by law, and intends in good faith to demolish the rental unit. Section 52 sets out the form and content requirements of a notice to end tenancy.

I find that the 4 Month Notice conforms to the form and content requirements of the *Act* as it is on the approved form, is signed and dated by the landlord issuing the notice, provides the address of the rental unit and the grounds for ending the tenancy-demolition of the rental unit. While there is a typographic error in the effective date of notice I find that pursuant to section 53(2) the incorrect date is automatically changed to January 31, 2021.

The tenants submit that of the tenants named on the 4 Month Notice only MB is a tenant under the tenancy agreement. The tenants also submit that GC is another tenant under the tenancy agreement and they believe the 4 Month Notice is ineffective as it did not name GC. I find the tenants' submission to have no basis in the *Act*. As clarified in Residential Tenancy Policy Guideline 13 co-tenants are joint and severally responsible for a tenancy under a tenancy agreement. There is no obligation on a landlord to name every co-tenant under a tenancy agreement.

I find the intention of the landlord to obtain vacant possession of the rental unit for the purposes of demolition to be clear on the face of the 4 Month Notice. I find that each of the tenants knew, or ought to have known, that the 4 Month Notice was intended to be effective as against all occupants of the rental property. I find the 4 Month Notice to be sufficient and effective as against the named respondents MB and JA, and any other co-tenants under the tenancy agreement.

Section 88 of the Act provides the manners in which a Notice to End Tenancy may be served which includes the following:

> **88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> …
>
> (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;

I accept the undisputed evidence of the parties that the 4 Month Notice was served by leaving a copy with JA on September 30, 2020. I find the landlord's evidence by way of the Proof of Service form signed by JA confirming that they are an adult who resides with the tenant and that they were served on September 30, 2020 to be sufficient evidence of service. JA was in attendance at the hearing and did not dispute that they had accepted the 4 Month Notice on behalf of the named tenant MB.

I therefore find that the tenants were duly served with the 4 Month Notice on September 30, 2020 in accordance with section 88 of the Act and in any event all of the tenants have been sufficiently served in accordance with section 71(2)(b) of the Act on that date.

The tenants submit that the 4 Month Notice was waived and a new tenancy agreement entered with the corporate landlord upon payment of rent for November 2020. I find insufficient evidence in support of the tenants' position. While the landlords did not submit the contract of purchase and sale of the rental property into evidence, I am satisfied with their testimony that the transfer included assumption of the existing tenancy and any Notices to End Tenancy that were issued prior to the completion of the sale. I find that the parties subsequent conduct to be in accordance with the *Act* and tenancy agreement.

The tenant continued to pay the same amount of monthly rent as they had to the personal landlord. If there was a new tenancy agreement as the tenant submits it would be reasonable to expect that the parties would have either signed a new written agreement or that there would have been some correspondence or communication indicating that the 4 Month Notice was cancelled. Instead, the tenants withheld the monthly rent for January 2021 as a tenant who receives a notice under section 49 of the *Act* is entitled to do. I find the tenants own conduct to be consistent with the existence of a valid 4 Month Notice to End Tenancy.

If the tenants believed that the 4 Month Notice was cancelled and of no further force or effect they would have had no right to compensation from the landlord pursuant to section 51 of the *Act*. The tenants conduct is consistent with the existence of a valid and enforceable 4 Month Notice under the *Act*. Furthermore, the parties gave evidence that the tenants had taken steps preparing to move out of the rental unit prior to deciding to file an application to dispute the notice several days after the effective date of the notice. It is not open for the tenants to choose to exercise their entitlement to compensation pursuant to the notice while simultaneously arguing that the notice is of no force or effect.

I am satisfied with the evidence of the corporate landlord that they intend, in good faith, to demolish the rental unit. The tenants did not dispute the intention of the landlord to demolish the unit but rather the subsequent use of the rental property. Based on the totality of the evidence including the testimonies of the parties and the Demolition Permit submitted into documentary evidence I am satisfied that the corporate landlord intends in good faith to demolish the rental unit.

I therefore issue an Order of Possession to the corporate landlord, the present owner of the rental property. As the effective date of the 4 Month Notice has passed I issue an Order enforceable 2 days after service on the tenants.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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: May 5, 2021

Residential Tenancy Branch