Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLC Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") in this matter on February 19, 2021. They are seeking a cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the "Four-Month Notice") issued by the landlord on January 24, 2021. Additionally, they seek recompense of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 27, 2021. At that time both parties confirmed their receipt of the other's prepared documentary evidence. I adjourned the matter to ensure the tenant had the proper amount of time to review the landlord's prepared materials.

The reconvened hearing in this matter was on May 31, 2021. The tenant had full opportunity to present their submissions and evidence to challenge the landlord's issuance of the Four-Month Notice. I adjourned the matter further to June 2, 2021 to give the landlord the opportunity to respond to the tenant's submissions and to clarify or reiterate points made in their own submission.

Preliminary Matter

In response to the landlord's summary submission on the reasons for their issuance of the Four-Month Notice, the tenant's advocate (hereinafter the "tenant") raised the issue of the rental unit address on that document. They provided that this address is wrong. Their evidence here is their conversation with a representative from the regional district office. The tenant submits this is confirmation that the landlord failed to provide the correct address on the Four-Month Notice. They referred to s. 52 of the *Act* which mandates an effective notice must give the address of the rental unit.

The representative provided a map image of the 'T'-shaped building, labelled with address. The northerly portion of the building is separately labelled with a different number from that "second one to the south." The Four-Month Notice lists the northerly address for the building, while the tenant resides in the building to the south.

The landlord pointed to the Building Permit provided in their evidence for this hearing that shows that building shown as the northerly portion of the building, clearly defined as "Property Address". This is the same address they provided on the Four-Month Notice to the tenant. They submit this is consistent with the number used by the regional district, who issued the building permit document – this number "refers to the entire property."

The *Act* s. 68 grants statutory authority to a delegate of the director to amend a notice to end tenancy:

> (1) If a notice to end tenancy does not comply with section 52, the director may amend the notice if satisfied that
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> (a) the person receiving the notices knew, or should have known, the information that was omitted from the notice, and
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> (b) in the circumstances, it is reasonable to amend the notice.

I so amend the Four-Month Notice issued here. The tenant was able to identify the specific unit in question, that where they resided, and received the document which the landlord served at the rental unit address. This is borne out by the fact that they applied for this hearing with the address that did NOT appear on the Four-Month Notice.

I find the Building Permit shows the street # in question is readily identified by municipal authorities as belonging to the property and the tenant resides in the specific unit # listed there. I find it is difficult, if not impossible, to mistake the one individual rental unit on that property for another with the same unit #. This street # indicated on the Four-Month Notice does not affect the impact of the document. I find this is not a default cancellation of the Four-Month Notice due to what the tenant submits is an incorrect address.

Issues to be Decided

Is the tenant entitled to an order that the landlord cancel the Four-Month Notice pursuant to s. 49 of the *Act*?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to s. 55 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord and tenant each provided a copy of the Four-Month Notice issued by the landlord on January 23, 2021. The document provides the move-out date of May 31, 2021. A cover letter accompanies the document in the landlord's evidence, delivered by hand. The document on page 2 gives the indication that the reason for ending the tenancy is to "Perform renovations or repairs that are so extensive that the rental unit must be vacant."

The landlord also indicated they had obtained all permits and approvals required by law to do this work. This is permit # 22208, issued by the regional district for "interior alterations to [the rental unit]." The provided copy of the permit shows the issue date of January 14, 2021, valid for 2 years.

On page 2 of the Four-Month Notice, the landlord provides details:

> The authorized work involves replacement of drywall, kitchen cabinets, replacement of bathtubs, toilets, flooring (where required) and other work as detailed in the renovations statement. Contractors have indicated that they will not be able to do the renovations if the units remain occupied by a tenant.

The landlord also submitted their renovation plan. This is for a combined three adjoining units, where the building structure was built over 60 years ago and had "no major improvements or upgrades". Additionally, "All units require extensive work to bring them up to current market and utility standards."

For this individual unit, the landlord provided the following list, along with a floor plan:

- Remove all drywall down to studs & reinsulate & redo & paint
- Electrical: rewire entire unit, replace electrical outlets, wire in lighting for living room
- Build living room closet
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- Remove lower kitchen cabinets & sink & replace
- Remove upper kitchen cabinets and replace
- Replace refrigerator
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- Remove and replace bathroom window
- Remove bathroom floor and replace wood and flooring
- Remove bathroom drywall down to studs, replace & paint
- Remove bathroom fixtures and replace
- Remove bathtub and shower surround & replace
- Remove bathroom vanity and replace
- Remove and replace toilet
-
- Remove bedroom flooring and replace
- Remove sealed off door in bedroom, replace with wall, insulate, drywall, and paint

In the hearing, the landlord provided a summary of the work to be done, noting it would be unsafe for the tenant to live in the suite while the work is being done. Specifically, they noted that "wiring could be exposed." The timespan for the work is 2 – 2.5 months, with the possibility that the project could expand. They noted the project was to begin immediately at the start of June, and the entire time they have been subject to trade labour shortages.

The tenant here presented an earlier 2019 decision from the Residential Tenancy Branch wherein the Arbitrator cancelled a Four-Month Notice for the reason of the landlord not having requisite permits in place prior to issuing that document. This concerns the neighbouring unit to that of the tenant here.

In January 2021, the landlord issued another Four-Month Notice to that neighbouring unit. In March 2021 an Arbitrator upheld that Four-Month Notice. The tenant here made submissions on the landlord's statements to that Arbitrator as recorded in the March 11, 2021 decision. They pointed to the landlord's submissions in the decision as "false" concerning the need for an electrical permit, this where it is only a single building and demolition permit is needed, and "[the landlord is] entitled to renovate the units without an electrical permit." The tenant submitted this rationale is wrong with respect to s. 49(6) of the *Act*, where "the landlord has all the necessary permits and approvals required by law."

Additionally, the tenant made submissions that reference the *Residential Tenancy Policy Guideline 2B,* that which gives a statement of the policy intent of the legislation on "Ending a Tenancy to Demolish, Renovate or Convert a Rental Unit to a Permitted Use." One passage sets out that where permits are not required for work, the landlord

must provide evidence to show this. The tenant pointed out in detail that the prior Arbitration decision set out portions of this policy guideline that were selected from a prior outdated version.

Further, the tenant made the effort to contact Technical Safety BC, the regulatory body that oversees electrical permits. In the hearing they presented that the term for its validity is 6 months. This term *may* be extended, or the permit itself may be amended. Additionally, most electrical firms utilize this process with ease using an online account, typically being a seamless process. The tenant contacted the contractor hired by the landlord here, who confirmed they have an online account so the process for obtaining an electrical permit for them is “quick and easy.”

In a separate dialogue with the electrician from March 17, 2021, the electrician confirmed that walls must be removed prior to a complete rental unit rewiring job. The direct question was: “can you tell me what needs to be done, how long it would take, and a rough estimate of cost.” There is no direct query on the need for a permit.

In reply to this, the landlord reiterated points regarding their knowledge of permits needed for electrical work. These are issued on a ‘cost-per-job’ basis, and no electrician will take out a permit without being able to identify the cost of a job upfront. In short, this requires an assessment at the site, which here cannot happen until renovation work has begun.

The landlord also reiterated they are legally in a position with the regional district to now begin this work. Finally, this is a type of work that makes it unsafe for anyone to be present in the rental unit. With the rest of the work to be done – this involving demolition, plumbing, and renovation – this in itself requires vacancy.

Analysis

When a landlord issues a Four-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason for ending the tenancy. Additionally, they landlord bears the burden of proving they are acting in good faith.

In this case, the landlord issued the Four-Month Notice pursuant to s. 49(6), and the evidence shows the tenant received the document on January 23, 2021. As the

tenant's Application was filed on February 19, 2021, I find they disputed the Notice within the timeframe as required under the *Act*.

The *Act* s. 49(6), regarding a Four-Month Notice, stipulates:

> (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:
>
> . . .
>
> (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant

The *Residential Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*[1] gives a statement of the policy intent of the legislation. I distil the relevant points here:

> When ending a tenancy under section 49(6) . . . 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.
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> 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.
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> "Permits and approvals required by law" can include demolition, building or electrical permits issued by a municipal or provincial authority . . .
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> 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.
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> 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.

[1] effective 2019-07-08

I find the landlord has shown with sufficient evidence that the Four-Month Notice is valid with respect to the work to be undertaken. They have the necessary permit that is required by law. This was in place before they issued the Four-Month Notice to the tenant on January 23, 2021.

I find the required permit is in place to do the work listed in the landlord's workplan for the rental unit. The permit which the landlord presented as evidence covers the extent and nature of the work that requires vacancy of the rental unit. I accept the landlord's evidence that all walls and flooring, cabinets and fixtures will be removed and replaced. There is a significant risk of danger present that entails vacancy. This risk is increased by the age of the building and the fact that no substantial work was undertaken on the building over its existence.

The tenant has placed emphasis on there not being an electrical permit in place prior to the issuance of the Four-Month Notice. They presented how this is an easy process, undertaken by a contractor or tradesperson as routine in any required electrical work. This emphasis on the ease with which a permit may be obtained does not present the immediate need for it.

I note the *Residential Policy Guideline 2B* provides that permits *can* include electrical permits. This is the same language that appears on page 3 of the Four-Month Notice. I find it is not imperative. I accept the landlord's analysis that, from a tradesperson's perspective, the nature of that permit is cost-based, and this requires an initial assessment. In this situation, that is a removal of walls prior to determining the nature of the electrical work to be undertaken, prior to obtaining a permit. At the primary stage, the removal of walls and insulation and other materials is necessary. Again, the risk of harm and the scope of the work involved both require vacancy.

The tenant provided evidence that shows they contacted the electrician with a hypothetical question on rewiring the entire rental unit. I find this was done with the assumption that rewiring will be necessary. The reply they received reveals that such work would entail a removal of walls; I find this confirms the landlord's point that an initial assessment here is necessary, and the nature of the permit applied for is cost-based. I find this evidence supports the landlord's position and shows that an electrical permit cannot *properly* and *within proper scope* be applied for because other conditions must be met. This here is the procedure that establishes that other conditions must be met prior to a permit being issued. For a certified tradesperson, this is the proper assessment which can only take place after removal of walls and close inspection.

In sum, I find the landlord has shown that the necessary permit for the type of work involved was in place. The tenant has not offset this – they have not shown that an electrical permit is required by law, as per s. 49(6).

The tenant here made submissions on a prior Arbitrator decision from a different rental unit. In essence they reargued that matter where that separate tenant made different submissions before the Arbitrator. I find these submissions focused on what they felt were flawed conclusions of the prior Arbitrator. On my review of the submissions related to this tenancy, I find the tenant did not raise an issue with the actual need for vacancy because of the nature of the work involved, nor did they raise the issue of the landlord's good faith in issuing the Four-Month Notice. Though not raised and thus not requiring my analysis, I find the landlord has established the need for vacancy, and there is no question of the scope of the work actually requiring this, with no evidence of ulterior motives in place.

In conclusion, I find the landlord has overcome the burden to establish that they had the required permit in place prior to issuing the Four-Month Notice to the tenant on January 23, 2021. For this reason, the tenant's Application for its cancellation is dismissed.

On my review, this Four-Month Notice complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*.

By this provision, I find the landlord are entitled to an Order of Possession. The tenancy shall end in the timeline specified when the landlord serves that Order to the tenant.

Because the tenant was not successful in their Application, their request for reimbursement of the Application filing fee is dismissed without leave to reapply.

Conclusion

The tenant's Application for cancellation of the Four-Month Notice is dismissed without leave to reapply.

Under s. 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** 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 s. 9.1(1) of the *Act*.

Dated: June 4, 2021

Residential Tenancy Branch