



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPL-4M**
 TT: CNL-4M-MT, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords applied for:

- An order of possession on the basis of a 4 Month Notice to End Tenancy for Renovation and Repairs to the Rental Unit pursuant to section 49.

The tenants applied for:

- More time to file their application to file their 4 Month Notice pursuant to section 56;
- Cancellation of the landlord’s 4 Month Notice pursuant to section 49; 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. Landlord HP primarily spoke on behalf of the landlords (the “Landlord”). Tenant BU confirmed their correct name which is used in the style of cause for this decision and spoke on behalf of the tenants (the “Tenant”).

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 tenant confirmed receipt of the landlords’ 4 Month Notice on October 28, 2020 and the landlord’s application for dispute resolution and evidence. Based on the testimony I

find the tenants duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

The Landlord disputed that they were served with the tenants' materials. The Tenant testified that they had served the landlords in the same manner they submitted evidence to the Branch. The Tenant made reference to emailing the landlords but was unable to testify as to the date when they served the landlords or to confirm the email address to which they sent their materials. The Tenant expressed confusion about what materials they were required to serve on the landlords and why the landlord was claiming they were not served. Based on the paucity of the evidence I am unconvinced that the tenants served the landlords with their materials in a manner consistent with the *Act* or at all.

Issue(s) to be Decided

Are the tenants entitled to more time to file their application for dispute resolution?
Should the 4 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover their 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 landlords assumed this tenancy when they purchased the rental property in 2020. The rental unit is one half of a duplex building. The tenants submit that they have been occupying the rental unit for 24 years.

The landlord issued a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion dated October 28, 2020 with an effective date of February 28, 2021. A copy of the 4 Month Notice was submitted into evidence. The reason provided on the notice for the tenancy to end is that the landlords intend to perform renovations or repairs that are so extensive that the rental unit must be vacant for a period of 6 to 12 months. The landlords provided a description of the work as follows:

The kitchen will be gutted & completely renovated including floors, cabinets, electrical will be moved to accommodate washer & dryer units.

Bathroom is leaking into basement. Insurance identified this as a major concern and needs to be fully torn apart and fixed. All flooring will be replaced as this is done. Electrical permit will be completed by the electrician as time of booking.

The landlords indicated that no permits or approvals are required to do the work contemplated.

The tenant confirmed receipt of the 4 Month Notice on October 28, 2020. The tenants filed their application for dispute resolution on February 26, 2021. The Tenant testified that they had originally filed their application for dispute resolution in November 2020 within the statutory timelines but claimed there was an error in the dispute management system of the Branch. The Tenant provided no cogent explanation of why they did not subsequently file their application for dispute resolution until 2 days prior to the effective date of the notice.

The tenants dispute that the nature of the work contemplated by the landlords require vacant possession and gave lengthy testimony about what they perceived to be the appropriate method by which repairs and work could take place in the rental unit. The tenants also made reference to their health issues and suggested that the landlords were not acting in good faith.

The landlords gave evidence that the rental property has been difficult to insure due to its current state and that the work contemplated was both necessary and prudent for the continued upkeep of the property. The landlords submit that the nature of the work requires vacant possession as the work will take place over several months during which there will be no access to electrical power, running water or bathroom facilities and large areas of the rental unit will be inaccessible.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 49(8)(b) of the *Act* provides that a tenant may dispute a Notice to End Tenancy for Demolition, Renovation, Repair or Conversion by making an application for dispute

resolution within 30 days after the date the tenant receives the notice. In the present case the tenants testified that they received the 4 Month Notice of October 28, 2020 on that date. The tenants filed their application for dispute resolution on February 26, 2021, well outside of the 30 days provided under the *Act*.

The tenants provided some testimony about their confusion with the filing process and claimed that they had filed an earlier application in November 2020. No documentary evidence was provided of any earlier attempts to file an application for dispute resolution and the Branch records do not indicate that there was any earlier attempts made or system errors that would have prevented the tenants from filing an application. I find the testimony of the tenants to have little air of reality or support in the any documentary evidence. Based on the little submissions, I am unable to find that there were any exceptional circumstances that would give rise to an extension of the statutory time limits.

I find that the tenant has failed to file an application for dispute resolution within the 30 days of service granted under section 49(8)(b) of the *Act*. As noted above, I have also found that the tenants have not served the landlords with their notice of dispute resolution in a manner consistent with the *Act* or at all. Under the circumstances I dismiss the tenants' application in its entirety without leave to reapply.

I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the 4 Month Notice, February 28, 2021.

I find that the landlords' 4 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. I am satisfied on a balance of probabilities that the landlord intends in good faith to carry out the work listed in the notice without any ulterior motives. I am satisfied that the work contemplated by the landlords does not require permits or approvals from governmental bodies and that no additional documentary evidence is required of their intention. I am satisfied based on the description of the rental unit and the work contemplated that vacant possession is required to carry out the work. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 4 Month Notice has passed, I issue an order effective 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 landlords 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: June 3, 2021

Residential Tenancy Branch