Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

On February 25, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel the Landlord's Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Notice") pursuant to Section 49(6) of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant's Application was originally set down for a hearing on June 3, 2021 at 9:30 AM but was subsequently adjourned, as per the Interim Decision dated June 7, 2021, because the parties were in the midst of settlement discussions and ran out of time to finalize them. This Application was then set down for a final, reconvened hearing on June 17, 2021 at 9:30 AM so that the settlement discussions could continue. The parties were advised that if a settlement could not be reached in the reconvened hearing, I would then render a final Decision on the matter.

At the outset of the original hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, the Tenant advised that she included some of her evidence with the Notice of Hearing package and then emailed the rest of her evidence to the

Landlord's wife's email address on May 19, 2021. She stated that she sent it to the Landlord's wife's email address because that person had been managing the tenancy. The Landlord acknowledged that his wife did manage the rental unit and that the email address was his wife's; however, he advised that he did not receive any of the Tenant's evidence with the Notice of Hearing package nor did he receive any evidence sent to that email address. He stated that he received an email from the Tenant on May 31, 2021 stating that the Tenant believed an email was sent to the Landlord, but she was not sure if this was successful as her computer had shut down.

Based on this testimony, without proof of service provided by the Tenant, and because this evidence was allegedly served by the Tenant in a manner that did not comply with the *Act*, I have excluded the Tenant's evidence and will not consider it when rendering this Decision.

The Landlord advised that he served his evidence to the Tenant by placing it in the Tenant's mailbox on April 17, 2021 and by emailing it to the Tenant on April 16, 2021. The Tenant confirmed that she received this evidence in her mailbox. Based on this undisputed testimony, as this evidence was served in a manner in accordance with the *Act*, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

Both the Tenant and the Landlord attended the final, reconvened hearing. The Tenant and the Landlord provided a solemn affirmation at the original hearing; however, as this file was adjourned to continue the discussion of a settlement, neither party was solemnly affirmed at the reconvened hearing. The reconvened hearing lasted for 15-minutes; however, a successful settlement could not be reached. As noted above, the parties were then advised that I would render a Decision based on the submissions provided at the original hearing.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on November 1, 2018 as a month-to-month tenancy. Rent was established at $1,000.00 per month and was due on the first day of each month. A security deposit of $500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord submitted that the Tenant was served the Notice by placing it in the Tenant's mailbox on January 24, 2021. The effective end date of the tenancy was noted on the Notice as May 31, 2021. On the first page of the Notice, the section for the Landlord's name was not completed. He advised that he was not sure why this was blank and that this was an oversight. He stated that his wife was his agent that managed this rental unit, as listed on the tenancy agreement, and that all of his tenants knew that he was the owner of the property as he frequently conducted inspections and completed repairs. He stated that every year, he provided a trailer for the tenants to put their garbage into and he would dispose of it for them for free.

The Tenant advised that she was confused as there was no name listed on the Notice for the Landlord. She stated that all her correspondence and rent payments went to the person listed on the tenancy agreement, and that she was only advised of who the Landlord was approximately a month before the original teleconference on June 3, 2021. She disputed the testimony that the Landlord ever came to the property and she stated that she only met him once.

Regarding the reason the Landlord served the Notice, he checked off the box to "Perform renovations or repairs that are so extensive that the rental unit must be vacant." The Landlord stated that the scope of the renovation would include new

cupboards, counters, bathtubs, sinks, showers, pot lights, heaters, windows, removing the fireplace, some electrical and plumbing, and sound proofing of the ceiling. He noted that the repairs are extensive, and the water and electricity would need to be turned off. As well, he indicated that there will not be a kitchen or bathroom, that the dust and dirt from the work would not be healthy to live in, and that the renovations would take four to five months to complete.

He advised that the building is very old and that extensive repairs are required. After the Notice was served and some work commenced to other parts of the building, it was discovered that additional problems, such as asbestos removal, needed to be addressed and the scope of the work increased. He stated that he initially advised the Tenant that during the renovation, there would not be any water, that the bathroom and all the flooring would be removed, and that the windows would be replaced. He contacted the city to confirm that permits were not needed to complete this work. He also contacted the city later and submitted an email as documentary evidence confirming that he did not require permits for the work that he wanted to complete. As well, his electrician confirmed that permits were not required for the work being undertaken.

Due to the increased scope of the work from the discovery of asbestos, the entire rental unit must be stripped completely and then sealed to remediate this. This alone will take a week and a half to finish. He submitted an estimate of this cost at $12,000.00 per unit to corroborate this part of the project. The Landlord also submitted documentary evidence to support his position with respect to requiring vacant possession.

The Tenant advised that when she received the Notice, she compared the items listed for renovation to the Residential Tenancy Branch website, and these all appeared to be cosmetic upgrades that would not take four to five months to complete. She stated that when she received an email from the Landlord regarding the scope of the repairs, she forwarded this to the city to determine if permits were required. She stated that she received an email reply advising that inspectors and permits were required. She suggested that the Landlord did not email the city with the full scope of the repairs as the reason why the city advised him that permits were not required.

Regarding the asbestos, she stated that WorkSafeBC determined that the abatement would take approximately three weeks to complete. As well, she believed that it was odd that the Landlord only provided her with the full scope of the project after she disputed the Notice.

The Landlord advised that the Notice only provided limited room for outlining the renovation and that the scope of the work changed after service of the Notice. Moreover, he advised that the full scope of the renovation does not require permits, at any rate.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

Section 68 of the *Act* states that if the Notice does not comply with Section 52, the Notice may be amended if it is clear that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice, and that it is reasonable to amend the Notice.

In reviewing this Notice, it is evident that the Landlord's name is not indicated on the Notice. While the Tenant claimed that she was confused by this omission and did not know who the Landlord was, I find it important to note that the Tenant named the owner of the property as the Landlord when she made her Application to dispute the Notice on February 25, 2021. As a result, I do not find it reasonable that the Tenant did not understand who the Landlord was that served this Notice. Consequently, pursuant to Section 68 of the *Act*, I am satisfied that the Notice should be amended to include the Landlord's name as the same person as the Respondent on this Application.

Section 49(6) of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord intends in good faith to renovate or repair the rental unit in a manner that requires it to be vacant.

When assessing reason for service of this Notice, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

From the Landlord, I have a copy of the Notice which outlines a number of areas of the rental unit that are being renovated or replaced in its entirety, I have a letter from a contractor confirming the extensive renovations and the need for vacant possession due to long periods of no water or utilities, and I have before me an email from a local building inspector confirming that permits are not required for the stated work. Moreover, subsequent to service of the Notice, it was determined that asbestos abatement was required for the entire property. The Landlord also submitted reports, invoices, and estimates to support the extensive nature of the work that needed to be conducted.

On the contrary, I have the Tenant's testimony outlining her disputes with the Landlord's submissions and her disagreement with the nature of the listed renovations on the Notice that required vacant possession. However, as noted above, I have no documentary evidence before me that supports the Tenant's position.

When weighing the totality of the evidence before me, I find that I prefer the Landlord's evidence on the whole. I am satisfied that the Landlord had planned for substantial renovations to the rental unit, that did not require permits, at the time the Notice was served, and that these renovations required vacant possession. Furthermore, I am also satisfied that subsequent to the Notice being served, it was determined that there was a requirement for asbestos abatement, which in my view only adds to the significance of the necessity for vacant possession. When reviewing the proposed list of items that the Landlord has planned to complete on the rental unit, I am satisfied that these would take a considerable amount of time to accomplish. Furthermore, I do not find it plausible that the work could be reasonably achieved with the Tenant still living in the rental unit.

Ultimately, based on a balance of probabilities, I am satisfied that the Landlord provided sufficient evidence at this hearing and has met the onus of proof to substantiate the reason for service of the Notice, as defined in Section 49 of the *Act*. As such, I dismiss the Tenant's Application, I uphold the Notice, and I find that the Landlord is entitled to an Order of Possession.

As a note, both parties were reminded of the compensation requirements under the *Act* if the Landlord does not follow through with the reason the Notice was served. In addition, pursuant to Section 51 of the *Act*, the Tenant is owed compensation in the amount of one month's rent after being served this valid Notice.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the $100.00 filing fee.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective at **1:00 PM on June 30, 2021** 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 21, 2021

Residential Tenancy Branch