Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, RP, LRE, PSF, CNL-4M, OT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order regarding another issue not listed; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The tenant testified that she emailed the landlord this application for dispute resolution on May 4, 2021. The landlord testified that she received the tenant's application for

dispute resolution on May 4, 2021. The landlord testified that she does not live in the country and that the landlord and tenant communicate primarily via email. I find that the landlord was sufficiently served, for the purposes of this *Act,* pursuant to section 71 of the *Act,* with the tenant's application for dispute resolution on May 4, 2021 because the landlord confirmed receipt on that day.

The tenant testified that she served the landlord with the evidence for this application for dispute resolution via email on July 5, 2021. The landlord testified that she received the July 5, 2021 email on July 5, 2021 but did not open it because she was afraid of being hacked. I asked the landlord if the tenant had authorization to serve her via email. The landlord testified that they have communicated for four years via email.

I find that given that the landlord accepted service of the application for dispute resolution via email and email was the standard method of communication between the parties, I find that it was reasonable for the tenant to serve the landlord via email as that was the standard form of communication between the parties. I also note that the landlord served the first Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit on the tenant via email. Pursuant to my above findings, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenant's evidence on July 5, 2021.

The landlord testified that she mailed the tenant her evidence around June 20, 2021. The tenant testified that she received the landlord's evidence on June 30, 2021. I find that this evidence was served in accordance with section 88 of the *Act.*

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Four Month Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Four Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Four Month Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that the landlord served the tenant with a Four Month Notice via email on March 22, 2021 (the "First Four Month Notice"). The tenant testified that she received the First Four Month Notice on March 24, 2021. The First Four Month Notice is dated March 22, 2021 and has an effective date of August 1, 2021. Both parties agree that the First Four Month Notice is not signed by the landlord.

The tenant applied to cancel the First Four Month Notice on April 23, 2021. Both parties agree that the First Four Month Notice was not signed by the landlord. The First Four Month Notices states that the reason for ending this tenancy is because the landlord is going to preform renovations or repairs that are so extensive that the rental unit must be vacant.

The landlord testified that when she realized that she did not sign the First Four Month Notice, she served the tenant with another Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Second Four Month Notice") via email on March 25, 2021. The Second Four Month Notice was signed by

the landlord. The tenant testified that the landlord did not email the Second Four Month Notice but had someone post it on the door of the landlord's house on the same property and that she did not know when this was posted. The tenant testified that a census delivery person notified her of the Second Four Month Notice posted to the landlord's door on May 4, 2021 and the tenant received the Second Four Month Notice on May 4, 2021.

I asked the landlord if the email serving the Second Four Month Notice was in her evidence package. The landlord testified that she did not know what was in her evidence package. I was not able to locate the March 25, 2021 serving email or any other proof of service document pertaining to the Second Four Month Notice.

The tenant did dispute the Second Four Month Notice with they Residential Tenancy Branch and the landlord did not file an application seeking an Order of Possession based on the Second Four Month Notice.

Notes on the dispute management system for this file state that on May 7, 2021 the tenant was advised that she would need to amend her application to dispute the Second Four Month Notice. No amendment was filed.

The landlord testified that she served the tenant with the Four Month Notices because the tenant has tried to get the landlord to commit fraud and has harassed the landlord. The landlord testified that the tenant called her a slumlord but that the property was in excellent condition at the start of this tenancy. The landlord testified that if the property required as much repair as stated by the tenant, the only way to repair such a small space was to have the tenant move out. The landlord testified that she has not been in the property for approximately one year and does not know the extent of repairs required or the length of time it would take to complete the repairs.

Analysis

I find that the First Four Month Notice was sufficiently served on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act* because the tenant confirmed receipt on March 24, 2021. I find that service was effected on March 24, 2021.

I find that the landlord did not prove, on a balance of probabilities, that the Second Four Month Notice was emailed to the tenant on March 25, 2021 because no proof of service documents or a copy of the serving email were entered into evidence and the tenant

disputed the landlord's testimony. I accept the testimony of the tenant that she received the Second Four Month Notice on May 4, 2021.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

> (a)be signed and dated by the landlord or tenant giving the notice,
> (b)give the address of the rental unit,
> (c)state the effective date of the notice,
> (d)except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1)for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e)when given by a landlord, be in the approved form.

I find that the First Four Month Notice was not signed and therefore does not comply with section 52(a) of the *Act*. The First Four Month Notice is therefore cancelled and of no force or effect.

I find that I am not able to render a decision on the Second Four Month Notice as neither party made an application seeking to either cancel it or have it upheld.

Section 49(6)(b) of the *Act*, states:

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

The law regarding section 49(6)(b) was set out in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257, Williamson, J. In that case, Mr. Justice Williamson confirmed that the *Residential Tenancy Act* is a stature that seeks to confer a benefit upon tenants; it seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in favour of the benefited group; that is, the tenant.

Mr. Justice Williamson indicated that section 49(6)(b) of the *Act* sets out three requirements:

1. The landlord must have the necessary permits;
2. The landlord must be acting in good faith with respect to the intention to renovate; and
3. The renovations are to be undertaken in a manner that required the rental unit to be vacant.

In regard to the third requirement, Mr. Justice Williamson indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant (empty), in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s.49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

Policy Guideline 2A explains the ‘good faith’ requirement as requiring 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 landlord did not provide any compelling evidence that vacant possession was required to complete repairs as the landlord testified that she did not know what repairs were needed or how long they would take. In addition I find that the landlord was not acting in good faith in serving the tenant with the First Four Month Notice because the main reason the First Four Month Notice was served was because the tenant allegedly attempted to get the landlord to commit fraud and because the tenant allegedly harassed the landlord.

I find that the landlord had an ulterior motive, other than completing renovations requiring vacant possession when the First Four Month Notice was served, namely evicting the tenant for the allegations outlined above. I also find that the landlord has not proved that permits for the work to be done were either granted or not required as no documentary evidence regarding permits were provided by the landlord. For these reasons, the First Four Month Notice is cancelled and of no force or effect.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

The First Four Month Notice is cancelled and of no force or effect. This tenancy will continue on in accordance with the *Act.*

The tenant is entitled to deduct $100.00, on one occasion, from rent due to the landlord.

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: July 20, 2021

Residential Tenancy Branch