Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1077420 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Four Month Notice to End the Tenancy for Demolition, dated March 19, 2021 ("Four Month Notice"); and to recover the $100.00 cost of the Application filing fee.

The Tenant, D.P., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant, D.P.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified and provided documentary evidence that they served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on April 29, 2021. The Tenant provided a Canada Post tracking number as evidence of service. However, the address on the registered mail receipt is different than the Landlord's address for service set out in the tenancy agreement. The Tenant said that she used

the address the Landlord had provided on the Four Month Notice, which was a more recent address than that on the tenancy agreement. I checked the Tenant's tracking number in the Canada Post website, and it told me that the registered mail package was delivered on May 6, 2021, and that a signature was available.

Based on the evidence before me in this matter and on a balance of probabilities, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and the Tenant confirmed these addresses in the hearing. She also advised that the residential property was sold, and the Tenant gave me the email address of the new property manager for the new owner. The Tenant also confirmed her understanding that the Decision would be emailed to all Parties, and any orders would be sent to the appropriate Party..

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and if I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. Generally, this is the person who applies for dispute resolution; however, a landlord must prove the reason for ending the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Tenant and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on August 23, 2021, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 15 minutes; however, neither the Respondent Landlord nor an agent acting on its behalf attended to provide any evidence or testimony for my consideration.

Issue(s) to be Decided

- Should the Four Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to reimbursement of the $100.00 Application filing fee?

Background and Evidence

The Tenants submitted a copy of the Parties' tenancy agreement and the Tenant confirmed that the periodic tenancy began on January 1, 2021, with a monthly rent of $2,000.00, due on the first day of each month. The tenancy agreement states and the Tenant confirmed that they paid the Landlord a security deposit of $1,000.00, and a pet damage deposit of $700.00.

The Tenant said that the Landlord gave the Tenants one month free of rent payment, pursuant to the requirement under section 51(1). However, the Tenant said that that the Landlord then told the Tenants that this month of free rent equates to having returned the security and pet damage deposits, plus $300.00 more.

However, section 51 of the Act states that a tenant who receives a notice to end tenancy under section 49 of the Act (the Four Month Notice applies), is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. Subsection 51 (1.1) states:

> A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Accordingly, I find that the free month's rent that is authorized under section 51 is not equivalent to returning a tenant's security or pet damage deposits. I find that the Landlord still holds the Tenants' $1,000.00 security deposit and $700.00 pet damage deposit.

In their Application, the Tenants said the following:

> Landlord has given notice to end tenancy in 4 months in order to demolish the unit. I asked if they had permits and they told me the property was changing owners and they didn't know about permits. However, the development proposal was submitted by the current landlords ([named]) and I called the Township… to

> ask if there was permits to demolish the rental unit, and they said that none exist as of today (April 12/2021), only an approval for re-zoning the property.

The Tenant said that the Landlord - her original Landlord - said that he sold the residential property. The Tenant also said that the other properties on the block have also been sold to the new owner, so that they can build something else there, although, the Tenant did not offer any documentary evidence to support this.

The Tenant submitted a copy of the Four Month Notice, which was signed and dated March 19, 2021, which has the rental unit address, and was served in person on March 19, 2021, with an effective vacancy date of July 31, 2021. The Four Month Notice indicates that it was served on the grounds that the Landlord intended to demolish the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.
>
> [emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Four Month Notice on a balance of probabilities.

Section 49(6)(a) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals by law, and intends in good faith, to demolish the rental unit.

There is no evidence before me that the Landlord has the permits necessary to demolish the residential property. Rather, the Tenants provided evidence that they contacted the City to see if any demolition permits had been obtained for the residential property, and they learned that no such permits were obtained for the property.

Based on the evidence before me, overall, I find that it is more likely than not that the Landlord sold the property to a new owner who may or may not want to demolish the property. However, the original Landlord stated that the purpose of the eviction was because the Landlord was going to demolish the property, not that they were going to sell the property. Accordingly, and pursuant to section 49 of the Act, I find that the Four Month Notice is invalid, and therefore, I cancel the Four Month Notice and find it void and unenforceable. The tenancy shall continue until ended in accordance with the Act.

I also award the Tenants with recovery of their $100.00 Application filing feel. **The Tenants are authorized to deduct $100.00 from one upcoming rent payment in complete satisfaction of this award**.

Conclusion

The Tenants are successful in their Application to cancel the Four Month Notice, as the burden of proof was on the Landlord to establish the validity of the Four Month Notice in this matter. However, no one attended the hearing on behalf of the Landlord to present the merits of their case. Accordingly, I find that the Four Month Notice is invalid and I, therefore, cancel it, and find that it is void and of no force or effect. The tenancy will continue until ended in accordance with the Act.

The Tenants are awarded the $100.00 Application filing fee from the Landlord, and they are authorized to deduct $100.00 from one upcoming rent payment in full satisfaction.

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: August 23, 2021

Residential Tenancy Branch