



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M FFT

Introduction

This joiner hearing dealt with the applications of the tenants of 4 rental units pursuant to section 49 of the *Residential Tenancy Act* (the “*Act*”) to dispute the landlord’s 4 Month Notices to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “4 Month Notices”). The applicant for Unit 3 also applied for recovery of the filing fee from the landlord pursuant to section 72.

Applicants for three of the dispute addresses attended the hearing with their advocate representing them. The advocate stated that they are not representing the tenants of Unit 1.

The landlord attended the hearing with their agent primarily speaking on their behalf. The parties were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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.

Service was confirmed for the parties present. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 4 Month Notices be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant of Unit 3 entitled to recover their filing fee from the landlord?

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 parties agree on the background facts. The rental units are suites in a multi-unit rental building. The landlord assumed the tenancies by purchasing the property from the previous owners. The landlord issued 4 Month Notices to the tenants dated March 25, 2021. The reason provided on the notices for the tenancies to end is that the landlord intends to perform renovation or repairs that are so extensive that the rental unit must be vacant. Copies of the 4 Month Notices were submitted into documentary evidence.

The landlord writes that the work they intend to perform are:

Foundation correction. Roof repair. Not just shingles, but may require structural work. Won't know until investigated further.

Complete reno of bathroom and kitchen, including new fixtures and cabinetry.

Bathrooms show significant damage and rotting as per assessment.

New Floors. Parts of floors missing in some areas of units. Pain interior and exterior.

Drywall repair and replacement (cracks in drywall). New windows and doors due to rot.

The landlord cites on the notices that no permits and approvals are required by law to do the intended work.

The landlord submitted into documentary evidence email correspondence from the municipality dated April 17, 2021 in response to an inquiry made by the landlord on April 8, 2021. In their email the landlord writes:

Just wanted some general information on conducting renovations in the [Municipality], I've done several renovations in the lower mainland and I've never needed a building permit for such work, if its such re & re. Just wondering if that's the same case in [Municipality]

Some of the work I'm looking at doing is the following:

- Re-roof (shingles only)
- Interior/Exterior Painting
- Replace flooring (laminated over top vinyl)
- Replace toilets and tubs (no change to layout)
- Replace kitchen cabinets (no change to layout)
- Replace kitchen and bathroom fixtures
- Replace electric fixtures
- Replace windows and any broken doors and closets bi-folds
- *No additions or alterations structurally
- *No electrical or plumbing changes
- *No change to the foot print of the building and no added structures

In the response dated April 17, 2021 the representative of the municipality writes:

If the renovation list is restricted to the items shown you may not require a permit. If items are added or if the renovation disturbs existing finishes within the building, a permit will be required.

The landlord submitted photographs of some of the work that has occurred in the other suites in the rental building and states that the nature of the work will require lengthy periods when essential services or facilities such as electricity and water will become unavailable to the tenants.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – 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 applicant for Unit 1 did not attend this hearing. The advocate confirmed that they are not authorized to act as agents on behalf of the tenants for Unit 1.

Consequently, as the tenants for Unit 1 did not attend the hearing I dismiss their application without leave to reapply. While I dismiss the application the landlord stated that they have entered a settlement agreement with the tenants of Unit 1 and were not seeking an Order of Possession. Accordingly, I issue no order as against the tenants of Unit 1.

Section 49(6) of the Act, which was in effect on March 25, 2021 the date of the 4 Month Notice, provided that 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 intended to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord issued the 4 Month Notice indicating that they have all necessary permits and approvals and that they will be performing renovations and repairs that are so extensive that the rental unit must be vacant.

Residential Tenancy Policy Guideline number 2 contemplates the elements necessary for a landlord to end a tenancy for renovations or repairs and states:

When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they 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.

The Guideline further provides that:

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

The landlord submits correspondence from the municipality which they say support their position that permits are not required for the contemplated work. I find this is not the

case. The correspondence with the municipality is dated April 2021 after the date of the 4 Month Notices.

I find that the list of proposed work the landlord submitted to the municipality omits issues mentioned in the 4 Month Notices. In the notices the landlord states the proposed work includes “Foundation correction. Roof repair. Not just shingles, but may require structural work.” In their correspondence to the municipality the landlord makes no mention of structural concerns and writes, “Some of work I’m looking at doing is the following: Re-roof (shingles only)”.

The correspondence from the municipality states, “If the renovation list is restricted to the items shown you may not require a permit. If items are added or if the renovation disturbs existing finishes within the building, a permit will be required.” I find a plain interpretation of the correspondence does not show that permits are not required for the renovations and repairs contemplated by the landlord. Even if the landlord restricted their work to those items listed the municipality does not state that no permits are required but simply that that they “may not” be required.

I find the correspondence to be insufficient evidence to support the landlord’s position that permits are not required by law for the work contemplated in the 4 Month Notices. I find that the list of work provided by the landlord to the municipality does not include items listed on the 4 Month Notices and the difference in the scope of the proposed work varies to a degree that the written statement is of little use to support the landlord’s submissions.

Based on the evidence I am not satisfied that the landlord had any permits required by law at the time that the 4 Month Notices were issued. I further find insufficient evidence to support the landlord’s position that no permits are required as the correspondence with the municipality is dated after the date of the notices, does not unequivocally state that no permits are required, and is in response to a list of proposed work that differs from the list provided on the 4 Month Notices.

Based on the foregoing I find that the landlord has not met their evidentiary onus on a balance of probabilities to establish that there is a basis for the tenancies to end. Consequently, I allow the tenants’ applications and cancel the 4 Month Notices as against Units 2, 3, and 7 of the rental property. The Notices are of no further force or effect and these tenancies continue until ended in accordance with the *Act*.

As the tenants were successful in their application I allow the tenants of Unit 3 to recover their filing fee from the landlord. The tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled monthly rent payment.

Conclusion

The application for unit 1 is dismissed without leave to reapply.

The tenants' applications for units 2, 3 and 7 are granted. I Order that the *Four (4) Month Notices to End Tenancy* dated March 25, 2021 within this JOINER application are **cancelled and of no further force or effect.**

Unit 3 is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 30, 2021

Residential Tenancy Branch