Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salco Management Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a Four Month Notice to End Tenancy for Conversion of a Rental Unit (the Notice), pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by owner GS, property manager JT and maintenance supervisor MT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

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 is compliant with the Act.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on June 01, 2003. Monthly rent is $804.19, due on the first day of the month. At the outset of the tenancy a security deposit of $275.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

GS affirmed he served the Notice by registered mail on June 25, 2021. The tenant confirmed receipt of the Notice in late June 2021.

A copy of the Notice was submitted into evidence. The Notice is dated June 25, 2021 and the effective date is October 31, 2021. The reasons to end the tenancy are:

- Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.
- Convert the rental unit to a non-residential use.

The Notice indicates that no permits or approvals are required by law to do the necessary work.

The tenant submitted this application on July 12, 2021 and continues to occupy the rental unit.

GS affirmed he plans to convert the rental unit for non-residential office use for himself, the manager and the maintenance supervisor of the rental building. GS testified that currently he does not have an office in the building, JT and MT have a desk in the maintenance workshop, which does not have good ventilation and a washroom. The staff computers are damaged by the dust in the workshop.

GS stated that all the 59 rental units in the building are occupied. The tenant's rental unit is the smallest one-bedroom, it is the ideal size for the office and it has good ventilation and a washroom.

GS affirmed there are security concerns regarding the parking lot and the tenant's rental unit has a good view of the parking lot. The workshop does not have a view of the parking lot. The security camera system broke six months ago and a new system needs to be installed. The tenant's unit is beside a staircase and this makes it easier to run the necessary wires to install the new security system.

GS testified the tenant's rental unit is one of the few suites that has not been renovated. It costs around $20,000.00 to renovate a suite and it is better for the landlord to use a non-renovated unit as the office. GS stated that no permits or approvals are required by law to do the necessary work to convert the rental unit into office space.

MT said he has been working in the rental building since 2012 renovating the units. MT does not have access to a washroom in the building and the nearest washroom he can use is 2 kilometres from the rental building. MT affirmed that no permits or approvals are required by law to do the necessary work to convert the rental unit into office space.

The tenant testified the landlord has an ulterior motive to issue the Notice. The tenant successfully disputed a one month notice to end tenancy for cause in 2015 and was awarded by the Residential Tenancy Branch a monetary compensation in 2016.

The tenant stated that he has not seen JT in the rental building for three years, JT does not like him, JT asked him to move out of the rental unit and they had an altercation. JT said she did not have an altercation with the tenant and that when she is in the building she spends most of her time in the workshop.

The tenant affirmed the prior office in 2012 was on the ground floor close to the building entrance and it is suspicious that the landlord wants to have an office not located on the ground floor.

Analysis

Based on the testimony offered by both parties, I find the landlord served the Notice on June 25, 2021 by registered mail. The tenant is deemed to have received the Notice on June 30, 2021, per section 90(a) of the Act.

Section 49(8)(b) allows the tenant to dispute the Notice within 30 days after the date the tenant received it. As the tenant submitted this application on July 12, 2021, I find the tenant dispute the Notice within the timeframe of section 49(8)(b) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

Section 49(6) 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 do any of the following:
> (a)demolish the rental unit;
> (b)[Repealed 2021-1-13.]
> (c)convert the residential property to strata lots under the Strata Property Act;
> (d)convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
> (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
> (f)convert the rental unit to a non-residential use.

Residential Tenancy Branch Policy Guideline 2B provides:

> GOOD FAITH
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.
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> […]
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> Non-residential use means something other than use as living accommodation. However, sometimes use as a living accommodation is secondary, incidental or

> consequential to a non-residential use. For example, correctional institutions are facilities that incarcerate persons convicted of criminal offences – a non-residential use – but they also provide living accommodation to incarcerated persons. Similarly, community care facilities provide 24-hour institutional care to persons and, in doing so, must also provide living accommodation to those persons. These facilities are considered non-residential even though they provide living accommodation because this use is consequential to their primary institutional use.
> Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office. Some live/work spaces may also be considered non-residential if the majority of the unit must be devoted to commercial enterprise based on municipal requirements: Gardiner v. 857 Beatty Street Project, 2008 BCCA 82.
> Holding the rental unit in vacant possession is the absence of any use at all. A landlord cannot end a tenancy for non-residential use to leave the rental unit vacant and unused.

In Gallupe v. Birch, 1998 CanLII 1339, the British Columbia Supreme Court states:

> [35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

I find the testimony offered by GS, MT and JT was credible and convincing. The landlord's representatives offered details of several reasons to explain why the tenant's rental unit is ideal for the office space needed. The Notice indicates and GS and MT confirmed that no permits or approvals are necessary by law to do the necessary work.

I find the prior disputes between the parties in 2015 and 2016 are not the motive or purpose to affect the good faith of the landlord's intention to convert the tenant's rental unit to a non-residential office use.

Based on the testimony offered by GS, MT and JT, I find the landlord has met the onus to prove, on a balance of probabilities, that he needs to convert the tenant's rental unit to a non-residential office use by the landlord's staff.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective on October 31, 2021.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an order of possession to the landlord effective on October 31, 2021. 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: September 03, 2021

Residential Tenancy Branch