Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, AS, LAT, PSF, LRE, MNDCT, OLC, RP (primary)**
MNDCT, RP, CNL-4M, OLC, LRE, LAT (secondary)

This hearing dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to authorize the tenant to change the lock pursuant to section 31;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("4 Month Notice ") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order to allow an assignment or sublet when permission has been unreasonably denied pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

- An order to restrict or suspend the landlord's right of entry pursuant to section 70;

Introduction

The parties attended and were provided an opportunity to present affirmed testimony, submit evidence and call witnesses. The hearing process was explained, and each party had opportunity to ask questions.

Consideration of several preliminary issues follow.

1. *Recording*

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

2. *Email*

Each party confirmed the email address to which the Decision and any Order will be sent.

3. *Attendance – Tenant*

The tenant attended with JE who explained that she was present as a support for the tenant and was neither an agent nor an advocate. JE did not provide testimony.

4. *Attendance – Landlord*

AM testified that the owner of the building in which the unit is located is a numbered company with the name and address referenced on the first page. The agent AM testified that the named respondent RF is also an agent of the landlord.

The agent AM testified he attended as agent for the landlord ("the landlord").

5. *Service of Notice of Hearing and Application for Dispute Resolution*

The landlord acknowledged service of the Notice of Hearing and Application for Dispute Resolution. The landlord testified there were no issues of service of the tenant's evidence.

6. *Service of Landlord's Evidence*

The landlord submitted evidence to the RTB on September 17, 2021. The evidence consisted of a written response of several pages and copy of an online ad.

The landlord acknowledged the documents were ***not*** provided to the tenant. The tenant testified he had not seen the documents.

In determining the admissibility of the landlord's evidence, I considered Rule 3.17 regarding new and relevant evidence.

The Rules provide that a respondent ***must serve*** and submit evidence as soon as possible so that it is received not less than 7 days before the hearing.

Evidence not provided to the other party and the RTB directly or through a Service BC Office in accordance with the Act or Rules may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting the evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment] and Rule 7.9 [Criteria for granting an adjournment].

The tenant testified that he worked “for months” to prepare his application. He was not prepared to proceed with the hearing if he did not have the time to consider the landlord’s evidence.

The landlord provided no explanation for the failure to serve the evidence which he did not claim was new or only recently available.

The issue of an adjournment was discussed. The tenant initially requested an adjournment so he could “prepare better”. The landlord objected to the adjournment.

After considerable discussion over 15 minutes over the issue of the adjournment, the tenant withdrew his request for an adjournment and requested the matter proceed without the landlord’s evidence.

After consideration of the parties’ testimony, the Act, and the Rules, I found that the landlord’s evidence, which he acknowledged was not served in compliance with the Rules, would not be considered. I found the evidence was not new, contained information that was long available to the landlord who could have served it in a timely manner, and the tenant would be prejudiced by the consideration of the evidence without an opportunity to review.

The hearing accordingly continued.

7. Previous Proceedings and Demeanour of Tenant

This is the third arbitration between the parties.

In my previous Decision of June 09, 2021, reference to which appears on the first page, I stated as follows:

Throughout the hearing, the tenant stated several times that he has difficulty in carrying out the tasks necessary to bringing an RTB proceeding. He testified that he is a person with a disability; he has challenges with technology and uploading of documents, as well as general organization of materials. The tenant testified that he had tried to get support for issues surrounding the tenancy but had not been successful in getting an advocate or support person. He said he had called the RTB so many times that he knew many of the Information Officers who were familiar with his situation.

I repeat the above observations with respect to this hearing.

Once again, the tenant attended without an advocate, although I appreciate the attendance of the support person although she stated she was a “placeholder” only.

The tenant testified during the hearing to challenges uploading evidence.

Despite being cautioned many times, the tenant was unable to confine his comments during the hearing to the issues at hand. The tenant repeatedly referenced irrelevant, allegedly unfair treatment he experienced by others. As a result, the hearing lasted considerably longer at 82 minutes than anticipated as 60 minutes was scheduled for the hearing.

The tenant submitted substantial evidence including dozens of video files, some of which did not relate to the issues at the hearing.

Rule 7.17 of the Rules of Procedure state as follows:

> *7.17 Presentation of evidence*
>
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.*

In accordance with rule 7.17, I exercised my authority to determine the relevance, necessity, and appropriateness the tenant's evidence. I will refer to only selected, key facts and findings in my Decision.

8. Settlement Discussions During Hearing

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The parties were unable to reach a Decision and the hearing continued.

9. Public Guardian and Trustee of British Columbia

As in my previous Decision, I find I am unable to assess serious issues affecting the tenant. I direct the landlord to immediately provide a copy of this Decision and Order to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374

Dispute Resolution Services

Residential Tenancy Branch
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Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant submitted a copy of a tenancy agreement with the previous property owner dated July 2017. Rent is $666.25 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of $325.00 which the landlord holds.

The tenant submitted a copy of a previous Decision of June 09, 2021, reference to which appears on the first page. The Decision addresses many similar matters as are requested by the tenant in this application. That is, the tenant requested repairs, pest eradication, mold removal, and relief from alleged persistent abusive behaviour at the hands of the landlord and other tenants.

The previous Decision orders as follows:

1. The landlord and each named respondent to this application shall provide their correct legal name(s), their address(es) for service and telephone number(s) within 5 days of service of this Order.
2. The landlord shall have the unit inspected within 10 days of the date of this Decision by qualified service (maintenance and repair) provider(s).
3. Within 5 days of the inspection, the service provider(s) shall provide to the parties a written report of the details of the inspection including the current condition of the unit and the sufficiency of the lock as well as recommended required maintenance with associated cost.
4. Within 30 days of the date of the report, the landlord shall complete the recommended repairs providing notice to the tenant in compliance with the Act and shall provide written confirmation of completion to the tenant.
5. If the landlord fails to carry out the terms of this Order or any aspect thereof,

the tenant may deduct $400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

6. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the Ac

The tenant testified that the landlord has not complied with the inspection order (#2), the report requirement (#3), the repair order (#4) and the ongoing requirement for maintenance (#6).

The tenant testified that the landlord repaired his window on August 18, 2021 and did nothing else relating to the Order. The tenant testified that he was always ready and willing to cooperate with the landlord in the carrying out of the terms of the Order.

The landlord had a different version of events. He testified the tenant would not let him in to the unit and said he, the tenant, told the landlord he had COVID. The tenant stated he has not had COVID and denied telling the landlord so.

The landlord testified he posted a Notice to the tenant's door effective the following day to carry out an inspection; no copy of the Notice was submitted, and the landlord did not testify as to the date.

The tenant testified that all the landlord's Notices are "back dated" so that the effective date has always passed; the tenant stated his belief that the landlord is attempting to create an appearance of compliance.

Pursuant to the terms of the Order, the tenant withheld $400.00 from rent for one of the three months since the July 9, 2021 Order, but paid full rent for the remaining two months. The tenant claimed he is entitled to a Monetary Order of $800.00.

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

4 Month Notice

The tenant requested cancellation of a 4 Month Notice. A copy of the Notice was submitted which is in the RTB form. The Notice is dated June 16, 2021, one week after the previous Decision of June 09, 2021, for reason that the unit will be demolished.

The tenant acknowledged service. The Notice stated that the Notice was personally served and posted on the date of issuance, June 16, 2021. The tenant could not recall the details of service. The landlord did not provide testimony or a Proof of Service document. If posted, service occurred June 19, 2021, 3 days after posting.

The effective date of the 4 Month Notice is October 31, 2021. The Notice includes a statement that the applicant has all permits and approvals required by law to do the work and named a City of Vancouver numbered permit dated March 21, 2021 issued by the City. The planned work is stated to be that the “existing house will be demolished, and three strata units will be built”.

The parties agreed that the tenant applied on July 15, 2021 within 30 days of service.

No documents were submitted by the landlord in support of the assertion that the unit was ready to be demolished. The landlord testified they have a “development permit” from the City; as well, a “permit to demolish” is “expected in 6 weeks”. The landlord testified that no date has been scheduled for the unit to be demolished.

Analysis

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.

Credibility of the Parties

In assessing the weight of the testimony and evidence, I acknowledge my earlier observations about the tenant's presentation. Nevertheless, I found the tenant credible, well-prepared, and sincere. I accept the tenant's testimony that he spent months preparing for the hearing as reflected in the plethora of evidence, some of which was irrelevant.

In assessing the weight of the landlord's testimony and evidence, I observed that he appeared indifferent about the issue of compliance with an RTB Decision. He repeated that the building was going to be torn down anyway. The landlord did not seem to care that the tenant claimed abusive behaviour at the hands of other tenants. I find he was uninterested in the tenant's complaints and wanted him out of the unit as soon as possible. The landlord continued a pattern of ignoring the tenant's claims by failing to respond to an RTB Decision. I found the landlord throughout was primarily concerned about his own agenda while lacking any comprehension of the effect on the tenant of the complaints.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenant's account although I will only consider relevant admissible evidence that was submitted; where the evidence of the parties' conflicts, I prefer the tenants' version of events. I do not give significant weight to the landlord's testimony.

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

4 Month Notice

Under section 49(8)(b) of the Act, a tenant may dispute a 4 Month Notice by making an application for dispute resolution with 30 days after he received the Notice. I find the Notice served on July 19, 2021 after posting 3 days earlier. I find the tenant filed this Application for Dispute Resolution within the timeline.

Section 49(6) states as follows (emphasis added):

> *6) 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) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;***
> *(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.*

The 4 Month Notice states as follows, in part (page 2, as written):

> ***2. PERMITS AND APPROVALS REQUIRED BY LAW***
>
> *Your landlord must have all permits and approvals required by law **before** they give you this notice. Permits and approvals required by law can include demolition, building or electrical permits issued by a municipal or provincial authority, …*

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Policy Guideline 2B: ***Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*** states in part (as written; underlining in document reproduced below):

"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.

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.

The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

.

If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

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 acknowledged that the permit to demolish had not been issued. I find the landlord has not met the burden of proof that the landlord has all necessary permits and approvals that are required by law before issuing the Notice. I find the landlord has not complied with the Act.

Good Faith

The onus is on the landlord to establish that the Notice was issued in good faith. The Guideline notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires 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 Guideline states in part:

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior

motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

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.

…
If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.

The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has called the good faith intent of the landlord into question.

Considering the evidence in its totality, and on a balance of probabilities, I find that the landlord has not met the burden placed on the landlord to establish that they truly intend to do what they said on the Four Month Notice, that they do not have another purpose, and they do not have an ulterior motive for ending the tenancy.

As I find that the landlord has not adequately met their evidentiary onus on a balance of probabilities, I allow the tenant's application and order that the landlord's Four Month Notice is cancelled and is of no further force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I therefore dismiss the 4 Month Notice dated July 16, 2021 which I find is of no force or effect. The tenancy shall continue until ended in accordance with the agreement and the Act.

The tenant's application is granted, and the 4 Month Notice is dismissed.

Non-compliance of Landlord

The parties have a long-standing dispute over repairs to the unit. The tenant's application for repairs was addressed in the previous Decision and will not be considered in this Application. The tenant's application with respect to repairs is dismissed with leave to reapply.

I find the landlord is primarily concerned with demolishing the unit and has failed to attend to responsibilities under the Act regarding the tenant and maintenance of the unit; the landlord has failed to comply with an existing Decision and Order. In the absence of any evidence from the landlord of an effort to comply, I find the tenant has met the burden of proof that the landlord has failed to carry out the terms on an RTB Decision and Order.

I find the landlord has failed to comply with the Decision of June 9, 2021. Specifically, I find the landlord has failed to comply with #2 , 3, 4 and 6 of my Decision which state as follows:

1. …
2. The landlord shall have the unit inspected within 10 days of the date of this Decision by qualified service (maintenance and repair) provider(s).
3. Within 5 days of the inspection, the service provider(s) shall provide to the parties a written report of the details of the inspection including the current condition of the unit and the sufficiency of the lock as well as recommended required maintenance with associated cost.
4. Within 30 days of the date of the report, the landlord shall complete the recommended repairs providing notice to the tenant in compliance with the

Act and shall provide written confirmation of completion to the tenant.

5. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may deduct $400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.
6. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*.

Under section 5 of the Order of June 09, 2021, the tenant was entitled to withhold rent of $400.00 following the June 9, 2021 Decision for three months. The parties agreed the tenant withheld rent for one month.

I therefore find the tenant is entitled to a Monetary Order for the remaining two months in the amount of $400.00 x 2 = $800.00. I accordingly award the tenant $800.00 for the withholding of rent for two months to which he was entitled.

As the landlord has failed to comply with the RTB Order, I direct that the tenant may withhold all monthly rent due from October 1, 2021 onward until the landlord complies with the Decision and Order of June 09, 2021; the landlord's compliance shall be determined by an Arbitrator or by written agreement by the parties.

In summary, I order as follows.

1. The 4 Month Notice dated June 16, 2021 is cancelled.
2. The tenant is awarded a Monetary Order of $800.00.
3. The tenant may withhold all rent due to the landlord from October 1, 2021 until compliance with the Decision of June 9, 2021 is determined by the RTB or by written agreement by the parties.

Conclusion

1. The 4 Month Notice dated June 16, 2021 is cancelled and the tenancy shall continue.
2. The tenant is awarded a Monetary Order of $800.00.
3. The tenant may withhold all rent due to the landlord from October 1, 2021 until compliance with the Decision of June 9, 2021 is determined by the RTB or by written agreement by the parties.
4. The tenant's application for repairs under sections 31, 32, 62, 65, 67, and 70 is dismissed with leave to reapply

The Monetary Order may be served by the tenant upon the landlord at the email address referenced on the first page. The Order may be filed and enforced as an Order of the Courts of the Province 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 29, 2021

Residential Tenancy Branch