



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SECURE SELF STORAGE 2013
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, LRE, OLC, FF

Introduction

On June 30, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Four Month Notice to End Tenancy for Landlord’s Use of Property.

The matter was scheduled as a teleconference hearing. The Landlord’s agent (“the Landlord”) and Tenants attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that she served a copy of her documentary evidence to the Tenants by placing it in an envelope and taping it on the rental unit near the door. The Landlord stated that a gate to access the door was locked and she could not gain full access to the door. The Landlord stated that the documents were in full view and that she has served other tenancy documents in this same manner.

The Tenants stated that they received an envelope taped near their door on October 13, 2021; however, they stated that they have not opened it and reviewed the contents. The Tenants stated that they do not accept packages from unknown parties.

Section 88 of the Act permits a person to serve documents by leaving a copy in a mailbox or by attaching a copy to a door or other conspicuous place at the address at which the person resides.

The Tenants disputed a Four Month Notice to End Tenancy for Landlord's Use of Property and served the Landlord with the Notice of Dispute Resolution Proceeding and have previously participated in a dispute resolution hearing involving this Landlord. It is reasonable that the Tenants should expect to receive documents from the Landlord. I find that Landlords served a copy of their documentary evidence to the Tenants in accordance with section 88 of the Act. The Tenants cannot avoid deemed service of these documents by refusing to open the envelope. The Landlords documentary evidence is deemed to have been served on October 13, 2021.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The hearing proceeded with respect to the dispute of the Four Month Notice to End Tenancy for Landlord's Use of Property. The Tenants' other claims are dismissed with leave to reapply.

Issue to be Decided

- Is the Landlord entitled to end the tenancy based on the issuance of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("the Four Month Notice").

Background and Evidence

The Landlord and Tenants testified that the tenancy began on September 1, 2015 and is on a month-to-month basis. Rent in the amount of \$910.00 is to be paid to the Landlord by the first day of each month.

The Landlord issued the Tenants the Four Month Notice dated May 31, 2021 in person to the Tenant on May 31, 2021. The Notice provides the following reason for ending the tenancy:

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

The Four Month Notice is silent on whether any permits and approvals are required by law to do the work.

The Four Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 30 days of receiving it received by filing an Application for Dispute Resolution at the Residential Tenancy Branch online or in person.

The Tenants disputed the Four Month Notice on June 30, 2021, within the required time period.

The Landlord testified that the dispute address is residential property / house that is rented to the Tenants under a tenancy agreement that falls under the Act. The residential property is adjacent to a commercial business (storage company) that contains living accommodation as part of employment. The onsite manager of the storage company has lived in the living accommodation within the commercial building for the past 17 years.

The Landlord stated that the onsite manager is retiring from the manager position but is taking a counter sales position. The Landlord is permitting the manager to continue living in the living accommodation contained within the commercial building. The Landlord stated that they will change the terms of the living arrangement to be a tenancy that falls within the Act.

The Landlord has hired a new on-site manager and has issued the Four Month Notice in order to provide a caretaker unit for the new manager.

In response to the Landlords testimony, the Tenants stated they oppose the Landlords intention for the following reasons:

- The Landlord's Judicial Review application at Supreme Court, related to an earlier Four Month Notice to End Tenancy, failed and the Landlord should not be permitted to issue this Four Month Notice.
- The Landlord wants a caretaker unit for a commercial property rather than a caretaker unit for a multi family residential property.
- The Landlord's documentary evidence should be dismissed because it does not meet with BC Provincial Court civil rules on service which is 21 days.

- The Landlord has an ulterior motive to end the tenancy because the Landlord has failed to maintain the property. The Tenant stated that the Landlord sent them the Four Month notice after they asked her to make repairs.

Analysis

Section 49(6) of the Act provides 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 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.*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I make the following finding:

The Landlord wants to end the residential tenancy to convert the rental unit for use by a caretaker / manager of a commercial unit. I find that section 49(6) of the Act does not permit the Landlord to end a tenancy for this reason. Section 49(6) provides that a Landlord can convert a rental unit for use by a caretaker / manager of a **residential property**.

In addition, the Landlord is not intending to convert the rental unit to a non-residential use. I find that the Landlord intends to have the new manager of the commercial business live in the rental unit as her residence.

The Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property dated May 31, 2021 is cancelled. The tenancy will continue until ended in accordance with the Act.

Since the Four Month Notice is cancelled and the tenancy is continuing, there's no need to address the Tenants' other submissions.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' application to cancel the Four Month Notice dated May 31, 2021 is successful.

I find that section 49(6) of the Act does not permit the Landlord to end a tenancy for use by a caretaker / manager of a commercial unit and the Landlord is not intending to convert the rental unit to a non-residential use.

The Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property dated May 31, 2021 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: October 27, 2021

Residential Tenancy Branch