Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, dated May 26, 2021 ("4 Month Notice"), pursuant to section 49(6).

The landlord's agent ("landlord"), the tenant, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 48 minutes from 11:00 to 11:48 a.m.

The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. She confirmed that the landlord company manages the property for the owner. She stated that she had permission to represent the owner at this hearing.

The tenant confirmed that his advocate had permission to speak on his behalf.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord, the tenant, and the tenant's advocate all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant's advocate confirmed receipt of the landlord's 4 Month Notice, but she said the tenant could not recall when he received the notice. The landlord confirmed that she served the notice on May 26, 2021, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 4 Month Notice on May 29, 2021, three days after its posting, as the tenant could not recall the exact date of receipt.

Issues to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2004 with the same owner and the former property management company. The current property management company assumed control of the rental unit on May 21, 2013. Monthly rent in the current amount of $425.00 is payable on the first day each month. A security deposit of $200.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed with the former property management company. The rental unit is one unit in a "triplex three-unit" building.

Both parties agreed that the landlord issued the 4 Month Notice, with an effective move-out date of September 30, 2021, for the following reason on page 2:

- *Perform renovations or repairs that are so extensive that the rental unit must be vacant. Indicate how many anticipated weeks/months **(please circle one)** the unit is required to be vacant.*

Both parties agreed that the renovations listed on page 2 the 4 Month Notice state:

- *plumbing: remove any galvanized lines, change out hot water tank*

- *renovations: windows replacement, flooring replacement, paint throughout, gutting bathroom, some kitchen renovations, potential electrical upgrades*

Both parties agreed that the landlord indicated on page 2 of the 4 Month Notice, that the permit was issued on May 25, 2021, by the provincial technical safety authority, with an abbreviated description, and the permit number. Both parties agreed that the landlord did not provide a copy of the permit to the tenant or the RTB, only a permit number, along with a payment receipt.

The landlord seeks an order of possession based on the 4 Month Notice. The tenant disputes the landlord's 4 Month Notice.

The landlord testified regarding the following facts. She did not indicate the number of weeks or months that the renovations would require, on page 2 of the 4 Month Notice, as indicated above. She thinks that the renovations will take a long time, maybe five or six months. The property is an "old building" in an "extremely run-down condition." The "plumber pulled the permit" and the landlord does not know the requirements for the permit issuer. The electrical in the rental unit has to be altered but the landlord does not know how much or whether an additional permit is needed, until the contractor goes in and takes a look first.

The tenant's advocate stated the following facts. The landlord did not indicate how much time is required to complete the renovations. The landlord has to show "extensive renovations" in order for the unit to be "empty." The landlord is planning only "cosmetic" renovations for the "carpet, paint, bathroom and kitchen." The tenant may be able to remain in the unit for some renovations, while it may be "advantageous" for him to leave temporarily for some renovations, if there is a high "volume." The tenant was not given any options by the landlord, to leave temporarily for some renovations to be completed.

The tenant is willing to leave for five to six months or the duration of the renovations and then return to the rental unit after they are completed.

Analysis

The tenant's application was filed on June 26, 2021, prior to the new law (section 49.2 of the *Act*) and procedure for determining 4 Month Notices for renovations, taking effect on July 1, 2021. Therefore, the former law (section 49(6)(b) of the *Act*) and former Residential Tenancy Policy Guideline 2B (from July 2019), both effective in June 2021, have been applied in this case.

According to section 49(8)(b) of the *Act*, a tenant may dispute a 4 Month Notice by making an application for dispute resolution within thirty days after he receives the notice. The tenant was deemed to have received the 4 Month Notice on May 29, 2021 and filed his application to dispute it on June 26, 2021. Therefore, the tenant is within the thirty-day time limit under the *Act*. The onus shifts to the landlord to prove, on a balance of probabilities, the basis of the 4 Month Notice.

The following RTB *Rules of Procedure* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *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…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the landlord did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

During this hearing, the landlord failed to properly go through the reasons for issuing the landlord's 4 Month Notice and the documents submitted in support of the landlord's application. This hearing lasted 48 minutes and the landlord was given ample opportunity to present her submissions and documents and respond to the tenant's advocate's submissions. I repeatedly asked the landlord if she had any other information regarding the 4 Month Notice and the landlord's permit. I repeatedly asked the landlord if she had any other submissions to provide, and if she wanted to respond to the tenant's advocate's submissions. The landlord repeatedly declined to do so.

Subsection 49(6)(b) of the *Act,* which was effective until July 1, 2021, formerly stated that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, formerly stated, in part B: "permits and approvals required by law," (my emphasis added):

> *When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can 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* ***permits or approvals*** *in place at the time the Notice to End Tenancy is issued* ***must cover an extent and nature of work that objectively requires vacancy*** *of the rental unit.* ***The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.***

As noted above, the tenant disputed the landlord's 4 Month Notice, so the landlord was required to provide evidence of the required permit to the tenant. The permit must cover an extent and nature of work that objectively requires vacancy. The onus is on the landlord to ensure that the planned work is allowed by relevant statutes or policies.

The landlord did not provide a copy of the permit to the tenant or the RTB. She did not have a copy of the permit in front of her during this hearing. She did not know or provide the details of the permit, stating only that the "plumber pulled the permit." The landlord simply provided a payment receipt for the permit, indicating a permit number.

The landlord did not review any documentary evidence at this hearing. She did not list any renovations in any detail, to confirm what work is planned for the rental unit. She did not point to any documents from certified, licensed professionals indicating the extent or scope of any renovations, the length/time of any renovations, or the cost of any renovations.

Policy Guideline 2B formerly stated in part at section C "good faith" (emphasis in original):

> *If a landlord gives a notice to end tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent <u>without carrying out renovations or repairs that require the vacancy of the unit</u>, the landlord would not be acting in good faith.*
> …
> *If the landlord is planning to do renovations or repairs and claims that permits are not required, this raises the question of whether the landlord intends in good faith to renovate or repair the rental unit in a manner that requires vacant possession.*
>
> *The onus is on the landlord to demonstrate that the planned renovations or repairs require vacant possession, and that they have no other ulterior motive.*

The vacancy requirement and examples of renovations were discussed at the former section E of Policy Guideline 2B:

> *In Aarti Investments Ltd. v. Baumann. (2019 BCCA 165), the Court of Appeal held that the question posed by the Act is whether the renovations or repairs "objectively" are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, according to the Court of Appeal, the tenant's willingness to move out and return to the unit later is not sufficient evidence to establish objectively whether vacancy of the rental unit is required.*
> …

Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time. As long as the tenant provides the landlord with the necessary access to carry out the renovations or repairs, then the tenancy does not need to end.

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- *replacing light fixtures, switches, receptacles, or baseboard heaters;*
- *painting walls, replacing doors, or replacing baseboards;*
- *replacing carpets and flooring;*
- *replacing taps, faucets, sinks, toilets, or bathtubs;*
- *replacing sinks, backsplashes, cabinets, or vanities.*

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the onus of proof to show that it issued the 4 Month Notice in good faith to renovate the rental unit in a manner that requires it to be vacant.

I find that this rental unit is not required to be vacant during the renovations, which was a requirement of the former section 49(6)(b) of the *Act*. The landlord's description of the renovations in the 4 Month Notice and at the hearing includes the cosmetic renovations listed above in the former Policy Guideline 2B. These include replacing the flooring and painting.

No specific details were given regarding the bathroom, kitchen and electrical in the 4 Month Notice or by the landlord at the hearing. The landlord simply indicated: "*gutting bathroom, some kitchen renovations, potential electrical upgrades."* I find that these are cosmetic renovations, which do not require vacancy of the rental unit, as indicated above in the former Policy Guideline 2B where it states:

- *replacing light fixtures, switches, receptacles, or baseboard heaters;*
- *replacing taps, faucets, sinks, toilets, or bathtubs;*
- *replacing sinks, backsplashes, cabinets, or vanities.*

Electrical work such as electrical service replacement and rewiring a circuit, were listed at former appendix A of Policy Guideline 2B as “usually minimal” and “unlikely” to require vacancy. Replacing the hot water tank and removing galvanized lines is similar to the plumbing, heating and electrical upgrades, such as boiler/furnace replacement, hydronic heating system upgrades, and re-piping a unit, all in former appendix A of Policy Guideline 2B, and listed as “usually minimal” and “unlikely” to require vacancy. Also, exterior window replacement was listed in former appendix A of Policy Guideline 2B as “usually minimal” and “unlikely” to require vacancy. I find that all of the above renovations are not extensive enough to require the rental unit to be vacant. I find that the period of renovations described by the landlord is temporary.

Accordingly, I allow the tenant’s application to cancel the 4 Month Notice. The landlord’s 4 Month Notice, dated May 26, 2021, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant’s application to cancel the landlord’s 4 Month Notice is allowed. The landlord’s 4 Month Notice, dated May 26, 2021, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession under section 55 of the *Act*.

This tenancy continues until it is 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 25, 2021

Residential Tenancy Branch