



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants stated that they served the originally named landlord, F.C. with the notice of hearing package and the submitted documentary evidence in person on June 19, 2021. The landlord confirmed receipt of the notice of hearing package as claimed, however, the landlord stated that they are in possession of a copy of the original 4 month notice; a copy of an unsigned Agreement to vacate and mutual agreement letter; and a copy of a completed RTB-28 form, Tenant Notice: Right of First Refusal signed by the tenants dated June 8, 2021. Both parties confirmed the tenant was served with their submitted documentary evidence by posting it to the rental unit door on October 4, 2021. Neither party raised any other service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the

Act. No issues were made by either party during the hearing regarding the documentary evidence submission of either party.

Discussions took place with both parties regarding the named landlord. Both parties confirmed that the named landlord was the original landlord when the 4 month notice was served and that subsequently the new owners are now the tenants new landlord listed. On this basis, both parties consented to amending the tenants' application to reflect the name of the new landlord.

At the outset, the tenants' application was clarified. Discussions took place in which it was discovered that the tenants had submitted a signed copy of RTB-28, Tenant's Notice: Exercising Right of First Refusal dated June 8, 2021. Discussions took place in which the tenant confirmed that this was done in error and that she does not intent to vacate the rental unit.

The tenants request for an order for the landlord to comply was also clarified. The tenants confirmed that this request was made in error as their only issue is disputing the 4 month notice. On this basis, this portion of the tenants' application was cancelled by the tenants as an error.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 4 month notice?

Are the tenants entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenants with the 4 month notice to end tenancy for Demolition, Renovation, or Conversion to Another Use (the 4 month notice) dated May 27, 2021 by posting it to the rental unit door on May 27, 2021. The 4 month notice sets out an effective end of tenancy date of September 30, 2021 and the reason selected as:

Perform renovations or repairs that are so extensive that the rental unit must be vacant. Indicate how many weeks/months the unit is required to be vacant.

No permits and approvals are required by law to do this work.

The planned work is described as Bathroom Renovation and the details of work states in part:

- removing the bathtub and all surround drywall (asbestos abatement if applicable), upgrade the shower diverter and p-trap
- Installing new bathtub and surround drywall work followed by showertiles
- installation of new toilet flange and surround subfloor
- This work will render the bathroom non-functional for a minimum of 4 months

The landlord provided evidence that this is a 13 unit wood frame building built in 1964 and is generally in original condition. The property was inspected in April and May of 2021 and found to require upgrades and renovations. The landlord noted that the roof, boiler, and hot water tanks were in original condition. The landlord noted failing bathtubs and surrounds in most units. The landlord stated that an application for permits would not be required from the local municipality. The landlord provided a signed and dated letter from their contractor detailing the work involved and the time period required for the units to be vacant for a 3 month period in which to start and finish all the work. The landlord submitted a signed and dated letter from the contractor's sub-contractor for plumbing. It states in part that the scope of work does not require plumbing permits for the described work and that the timeframe for work was approximately 4 months with water being shut off for all units. The landlord also submitted a signed and dated letter from their insurance carrier detailing that the landlord will not be able to obtain insurance unless satisfactory upgrades are made on the rental property building plumbing. The landlord has submitted copies of emails from the landlord's agent and the local municipality for the listed scope of work which confirms that no permits are required.

The tenant disputed the landlord's notice also stating that their bathroom was recently upgraded. The landlord stated that they have no information on the previous plumbing upgrades and relies on the inspections by their contractors. The tenant was not able to provide any evidence regarding the recent bathroom upgrades.

Analysis

Section 49 (6) of the Act sets out 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 demolish, renovate or repair the rental unit that requires the rental unit to be vacant.

In this case, both parties confirmed the landlord served the tenants with the 4 month notice on May 27, 2021. The Residential Tenancy Branch File shows that the tenants filed their application for dispute on June 15, 2021.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

On this basis, the tenants have an filed application for dispute within the allowed time frame.

The tenants provided a written description of their application they "don't believe the landlord plans to renovate we requested permits with no avail." The tenants have also argued that their bathroom was recently already upgraded.

The landlords have provided in support of their notice to end tenancy letters from their contractor, sub-contractor(plumber) and email communications with the local municipality in confirmation that there are no permits required based upon the submitted scope of work. The landlord has stated that he is unaware of any previous plumbing upgrades made by the previous ownership, but has relied on the submitted contractor's letter detailing the scope of work after an inspection of the property was made. The landlord has also referenced a letter from his insurance carrier that upgrades to the building are a requirement to gain proper insurance coverage.

I accept the affirmed evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has provided sufficient evidence that there are no permits required as per the contractor. Sub-contractor(plumber) and according to the local municipality who enforces the bylaws. As such, the tenants' application is dismissed. The 4 month notice to end tenancy is upheld. Pursuant to Section 55 of the Act, the landlord is granted an order of possession. As the effective end of tenancy date has now passed, the order of possession shall be effective 2 days after it is served upon the tenants.

Conclusion

The landlord is granted an order of possession.

The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 19, 2021

Residential Tenancy Branch