



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit, and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by his daughter, who attended as agent for the landlord. The landlord's agent and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 15, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,500.00 is payable on the 15th day of each month and there are no rental arrears. During the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was

collected. The rental unit is a suite within a 4-plex and the landlord resides in one of the units; the other 3, including this unit are rented. A copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on June 8, 2021 the tenant was served with a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit (the Notice) by attaching it to the door of the rental unit with a witness present, and a copy has been provided for this hearing. It is dated June 8, 2021 and contains an effective date of vacancy of October 14, 2021. The reason for issuing it states: "Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property."

The landlord's agent works full time and also owns a 4-plex. The landlord is 89 years old and is not able to look after his rentals and property. The landlord's agent has tried to help but major construction is going on in the back of her 4-plex and as a result, major damage has been caused to her property and needs to focus on that, so needs someone to look after her father's rentals and property because the landlord's agent can't do it anymore. This particular unit has been selected for use by a caretaker or manager because the irrigation shut-off valves are in that unit which need to be dealt with in the spring and fall.

One of the other tenants has been there for 18 years and the other 20 years.

Construction behind the property belonging to the landlord's agent has been going on for quite awhile and the landlord's agent only has a certain amount of time to deal with the damages; a lawsuit has to be filed within 2 years and it's been over a year. The landlord's agent will have to go to City Hall with photographs of damages among other things and needs to focus.

The parties had participated in a previous residential tenancy dispute hearing and a copy of the resulting Decision dated June 28, 2021 has been provided for this hearing. In that dispute the tenant had applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;

- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord.

The application was dismissed without leave to reapply, and the landlord's agent testified that the previous application of the tenant has nothing to do with the Notice issued to the tenant on June 8, 2021.

During cross-examination, the landlord's agent was asked why the landlord has not asked the tenant to be the caretaker, and the landlord's agent responded that the tenant is a nurse and not skilled to do the position. The duties of the caretaker will be landscaping, irrigation and collecting rent. A landscaping company has been used for several years, but the landlord is not going down that route anymore and the caretaker will take over those duties.

The landlord had arranged for a specific caretaker to move into the rental unit by the effective date in the Notice, however the tenant disputed it and the person could not find an affordable place to live and moved to Alberta, so the landlord is waiting for a determination of this hearing.

The tenant testified that the *Residential Tenancy Act* says a landlord may end a tenancy if the landlord has all necessary permits to convert the property for the use of the landlord, and must act in good faith. The tenant does not believe the Notice was issued in good faith, and the landlord has an ulterior motive and the Notice is retaliatory. The tenant had applied for repairs and monetary compensation in early April and on June 2, 2021 the landlord was served with evidence and amendment to the application, and then the tenant was served with the Notice.

The landlord's agent told the tenant on the phone that the landlord doesn't want to have anything to do with the tenant. They want the tenant to move out for financial reasons, to increase rent. They told the tenant that many times and that it's worth more than the tenant is currently paying, and during the previous hearing, the landlord requested that rent be increased to \$1,900.00 per month. Copies of the landlord's evidence from that hearing have been provided for this hearing, which includes a Monetary Order Worksheet from the respondent landlord totaling \$10,835.90.

The initial Notice has no indication whether or not permits are required or how the rental unit will be converted. The landlord introduced this Notice in the last dispute hearing and there are still no approvals or plans or any conversations with a caretaker or negotiations or what duties a new caretaker would do.

On June 30, 2021, after the last hearing, the tenant sent the landlord an email proposing a mutual agreement to end the tenancy with no compensation to the tenant for ending the tenancy, effective April 15, 2022, however the landlord refused, but no information about a caretaker was mentioned.

All 4 units are self-contained, so there are no common areas. The tenant is currently not working so is aware of what goes on in the grounds and sees the landlord watering and putting in the yard. Each unit has their own yard waste bins and recycling. The tenant has access to the irrigation switches, and the landlord or agents of the landlord have entered the rental unit to turn it on and off in spring and fall, but the tenant could do that. A photograph of the area containing the valves has been provided for this hearing. There is no snow removal, and no outside windows are washed by the landlord or agents. Rent for the other 2 rental units are paid by cheque to the landlord, and the tenant pays by cash. The landlord's agent has taken it upon herself to collect rent, and an e-transfer is not an option given by the landlord.

The tenant believes that the landlord says a caretaker is needed only because of the previous dispute hearing. Such duties would not be an on-going responsibility of a caretaker. Policy Guideline 2 (b) states that where a tenant raises an issue that the Notice has not been issued in good faith, the onus is on the landlord to prove, by some kind of evidence that this is something that has or will be done or that there is no need for any permits. It is probable that the landlord and the landlord's agent wants the tenant to move out because the tenant brought a dispute and that the landlord will re-rent at a higher rate. There are little duties for a caretaker to take on, and the tenant does not see that the landlord will be giving up any rent; any penny received is needed for the landlord's living expenses as stated in the previous hearing. The building also needs a new roof.

In response, the landlord's agent testified that the amount of rent that a caretaker will pay will be negotiated and will be dependent on the skill-set, but will be a very reduced rent. The caretaker will look after the irrigation system, complete painting that might need to be done and collecting rent. No conversion or permits will be required.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy*

Act, which can include the reason(s) for issuing it, and in the case of a Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the tenant feels that due to the previous hearing which dealt with an application brought by the tenant, the Notice given was retaliatory. The tenant also testified that at the previous hearing, the landlord asked to increase the rent from \$1,500.00 to \$1,900.00 per month. I have reviewed all of the evidentiary material of the parties, including the Decision after the previous hearing on June 28, 2021, and although the landlord had provided a Monetary Order Worksheet without an application, there is nothing in the Decision confirming that the landlord had asked to have the rent increased.

However, the June 28, 2021 Decision states, in part:

"... I find much of the requests made by the tenant to be unreasonable such as requiring heating for a laundry room or to have no basis under the Act such as the tenant's demand for a reduction in rent due to their financial circumstances.

"I find the tenant's characterization of the landlord's conduct as intimidation, harassment and threats to not be supported in the documentary materials and is an unreasonable interpretation of the communication between the parties. I find the tenant's submissions regarding their ongoing relationship with the landlord, attempting to characterize themselves as hapless victims to a capricious and unprofessional landlord's campaign of ongoing harassment to not be supported in the materials and be so hyperbolic as to lose any credibility.

"I find the tenant's submissions primarily consist of subjective complaints, assertions with limited documentary support and claims that do not reflect reason or proportionality. I do not find the selected correspondence between the parties to reasonably be interpreted as harassment. Similarly, I find little evidence in support of the tenant's various complaints about their right to quiet enjoyment being affected. A breach means a substantial interference with the ordinary and lawful enjoyment of the premises. While I accept that the tenant feels unhappy, I do not find that there has been any action on the part of the landlord or their agents that could reasonably be characterized as a breach such that it may for the basis of a claim."

The Arbitrator clearly found that the tenant's claims and characterization of the landlord were not supported, and I am satisfied that the landlord wants the tenant to move out.

The tenant testified that on June 2, 2021 the landlord was served with evidence and amendment to the previous application, and then the tenant was served with the Notice. The landlord testified that it was served on June 8, 2021. The tenant does not believe that the landlord wants to deal with the tenant anymore, and testified that the landlord's agent told the tenant on the phone that the landlord doesn't want to have anything to do with the tenant, and has told the tenant that rent could be increased.

The landlord's agent does not have a caretaker to move into the rental unit, has no idea how much rent will be charged to the caretaker for the rental unit, and I find that if the landlord is granted an Order of Possession, that opens the door to the landlord to re-rent for a higher amount, which is not sanctioned by the *Act*.

I also consider that the duties for a caretaker are questioned by the tenant, who testified that no one clears the snow or cleans windows, and the landlord's agent testified that the duties would include landscaping, but currently has a landscape company who has provided that service for about 4 or 5 years. Given the timing of the Notice, being prior to the first hearing and within a week after the tenant served an Amendment to the application, I am not satisfied that the landlord has established good faith intent.

The Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit is hereby cancelled and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above the Four Months' Notice to End Tenancy For Demolition, Renovation, Repair or Conversion of a Rental Unit dated June 8, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that

the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 31, 2021

Residential Tenancy Branch