



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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The tenant applied for dispute resolution on June 30, 2021.

Preliminary Issue- Service

The tenant testified that he did not serve the landlord with this application for dispute resolution because he did not know he had to. The agent testified that the landlord learned of this application for dispute resolution by calling into the Residential Tenancy

Branch 30 days after serving the tenant with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("Four Month Notice").

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I note, pursuant to *M.B.B v. Affordable Housing Charitable Association*, 2018 BCSC 2418, the landlord bears the onus of establishing the validity of a Notice to End Tenancy even if the tenant's application to cancel the Notice to End Tenancy is dismissed. If the landlord seeks an Order of Possession, the landlord must prove the validity of the Four Month Notice unless a conclusive presumption applies.

Section 49(8) and (9) of the *Act* states:

(8)A tenant may dispute

(a)a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a)is **conclusively presumed** to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

[Emphasis added]

Both parties agree that the tenant was personally served with the Four Month Notice on June 23, 2021. The tenant testified that the landlord served him with the first two pages of the Four Month Notice on June 23, 2021 and the second two pages a few days later. The agent testified that the tenant was served with all four pages on June 23, 2021. The tenant applied to cancel the Four Month Notice on June 30, 2021.

In this case, since the tenant filed to dispute the Four Month Notice within 15 days of its receipt, no conclusive presumption applies. Therefore, in order to be granted an Order of Possession, the landlord must prove the validity of the Four Month Notice.

The agent testified that the landlord is seeking an Order of Possession pursuant to the Four Month Notice. The agent consented to continue with the tenant's application for dispute resolution despite not being served.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 1, 2015 and is currently ongoing. Monthly rent in the amount of \$906.00 is payable on the first day of each month. A security deposit of \$332.50 was paid by the tenant to the landlord.

The Four Month Notice states that the landlord is ending the tenancy because the landlord is going to:

- Perform renovations or repairs that are so extensive that the rental unit must be vacant.

The agent testified that the tenant was served with the Four Month Notice because the subject rental property needs to be renovated before the landlord's son moves in.

The Four Month Notice states:

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

The Four Month Notice states:

- Planned Work: Major renovations, wiring, electrical
- Details of work (*if you are ending the tenancy for renovations or repairs, explain why the renovations or repairs require the rental unit to be vacant): electrical-rewiring and work related items.

The agent testified that the following renovations are required:

- Re-wiring,
- Kitchen works, and
- Repair potential leaks,

The agent testified that he does not know the full scope of the renovations required and the landlord will have to look once the tenant moves out. The agent testified that he selected the box on the Four Month Notice stating: "No permits and approvals are required by law to do this work" because that's what he was told by red seal contractors when he obtained rough estimates. The landlord did not submit any evidence for consideration.

The tenant testified that the landlord is trying to renovict him and his family.

Analysis

Section 49(6)(b) of the *Act*, states:

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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The law regarding section 49(6)(b) was set out in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, Williamson, J. In that case, Mr. Justice Williamson confirmed that the *Residential Tenancy Act* is a statute that seeks to

confer a benefit upon tenants; it seeks to balance the rights of landlords and tenants and to provide a benefit to tenants that would not exist without it. Any ambiguity in the language of the *Act* should be resolved in favour of the benefited group; that is, the tenant.

Mr. Justice Williamson indicated that section 49(6)(b) of the *Act* sets out three requirements:

1. The landlord must have the necessary permits;
2. The landlord must be acting in good faith with respect to the intention to renovate; and
3. The renovations are to be undertaken in a manner that required the rental unit to be vacant.

In regard to the third requirement, Mr. Justice Williamson indicated, citing the *Allman* decision, that one of the primary considerations is whether, as a practical matter, vacant possession of the rental unit is required due to the nature and extent of the renovations. The fact that the renovations may be accomplished at less cost or in less time with the tenant gone was only a marginally relevant factor. The renovations, by their nature, must be so extensive as to require that the unit be vacant (empty), in order for them to be carried out.

Further, Williamson, J. stated that it must be the case that the only way to have the rental unit vacant or empty is to terminate the tenancy. The purpose of s.49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure landlords are able to carry out renovations. Therefore, where it is possible to carry out renovations without ending a tenancy, there is no need to apply s. 49(6).

Residential Tenancy Policy Guideline 2b states:

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 did not provide any documentation to prove that permits are not required for the renovations listed on the Four Month Notice. I find that the landlord has failed to prove, on a balance of probabilities, that permits are not required for the proposed renovation. I find that the landlord has not proved, on a balance of probabilities, the first of the three requirements set out in section 49(6)(b) of the *Act*. I therefore find that the

Four Month Notice is cancelled, and that the landlord is not entitled to an Order of Possession for Demolition, Renovation, Repair or Conversion of Rental Unit.

Since the landlord failed to pass the first requirement of section 49(6)(b) of the *Act*, I decline to consider if they would have passed the second and third requirements.

I decline to award the tenant the return of the \$100.00 filing fee due to the tenant's failure to properly serve the landlord with this application for dispute resolution.

Conclusion

The Four Month Notice is cancelled and of no force or effect.

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 26, 2021

Residential Tenancy Branch