Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a Four Month Notice to End Tenancy for Landlord's Use of Property (the Four Month Notice);
- An order restricting or setting conditions on the Landlord's right to enter the rental unit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 AM on November 19, 2021, and was attended by the Tenants J.K. and J.W., the Landlord S.B., and the Landlord's spouse H.B., all of whom provided affirmed testimony. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding Package from the Tenants, which includes a copy of the Application and the Notice of Hearing, and raised no concerns with regards to service method or date, the hearing proceeded as scheduled. As the parties also acknowledged service of the documentary evidence before me on each other, and neither party raised concerns regarding the quality or accessibility of the documentary evidence, the service date, or the service method, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also

advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12. The parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application and confirmed at the hearing.

Preliminary Matters

Preliminary Matter #1

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the *Act*.

Preliminary Matter #2

In their Application the Tenants sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a Four Month Notice, I find that the priority claim relates to whether the tenancy will continue or end and that the Tenants' claim for an order restricting or setting conditions on the Landlord's right to enter the rental unit is not sufficiently related to the notice to end tenancy or continuation of the tenancy. As a result, I exercise my discretion to dismiss it with leave to reapply.

As a result, the hearing proceeded based only on the Tenants' Application seeking cancellation of the Four Month Notice and recovery of the filing fee.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of a Four Month Notice, and if not, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy commenced on December 1, 2020, and that rent in the amount of $2,600.00 is due on the first day of each month. Although the tenancy agreement contains conflicting information regarding whether it was a month to month tenancy or a fixed term tenancy, at the hearing the parties agreed that it was a fixed term tenancy agreement. There was also a dispute between the parties about whether the end date of the fixed term was supposed to be the end of June or the end of July, 2021, and who amended the written tenancy agreement to change this date. However, the parties agreed at the hearing that the tenancy has been month to month since at least August of 2021. The tenancy agreement also indicates that a $1,300.00 security deposit was required and paid, and at the hearing the parties agreed that the Landlord had already returned this amount to the Tenants.

The Landlord stated that since approximately February of 2021, they have had plans to demolish the rental unit and build a new home. As a result, the Landlord stated that they served the Tenants with the Four Month Notice on June 27, 2021, by placing it in their mailbox as the Tenants were not home when they attempted to deliver it personally. The Landlord stated that it was also subsequently sent to the Tenants by email. Although the Tenants indicated in the Application that they had received the Four Month Notice on June 2, 2021, at the hearing the Tenants' acknowledged receipt of the Four Month Notice from their mailbox on June 28, 2021, and stated that the June 2, 2021, date actually related to an invalid verbal one month notice given to them by the Landlord prior to issuance of the Four Month Notice.

The Four Month Notice in the documentary evidence before me is signed and dated June 27, 2021, has an effective date of October 31, 2021, is on the version of the form dated 2021/03/11, and states that the tenancy is being ended because the Landlord is going to demolish the rental unit. It also states that a permit was issued by the municipality in which the rental unit is located for the building of a newly constructed

detached house on May 17, 2021, and provides the permit number, which I have recorded on the cover page of this decision.

The Landlord stated that they have already received approval from the municipality to build their new home on the site of the rental unit and that the issuance of the building permit is only pending demolition of the property. The Landlord stated that they have also applied to have the street address changed (as the door to their new home will face a different street), and that finalization of that change is pending issuance of the demolition permit and possibly actual demolition of the rental unit. Copies of email correspondence with the municipality supporting these statements was submitted. Although the Landlord stated that they had applied for the demolition permit, they did not submit any documentary evidence to corroborate this testimony and could not provide me with the date of the demolition permit application at the hearing. The Landlord pointed to several documents in support of their position that they are entitled to end the tenancy pursuant to section 49(6)(a) of the *Act*, including email correspondence with the municipality regarding their change of address request and the status of their building permit, a fee slip and receipt for the cost of their building permit, as well as text messages with the Tenants regarding the need for surveys and asbestos assessments, and the Landlord's plans for the property.

The Landlord stated that prior to the issuance of the demolition permit, many things are required, such as an asbestos inspection and a pest control inspection, among other things, and argued that these could not be completed during the tenancy. As a result, the Landlord acknowledged that they do not yet have the demolition permit. The Tenants stated that there is no reason why the asbestos and pest inspections cannot be completed while they reside in the rental unit. The Landlord responded by stating that the Tenants had prohibited them from entering for these purposes. The Tenants denied barring entry and stated that they had repeatedly requested that the Landlord simply give them proper notice under the Act for entry, given the intrusive nature of these types of inspections, which the Landlord did not do. When I asked the Landlord why they did not give notice under the Act to enter for the purpose of having these inspections completed, they stated that they thought that hey needed the Tenants' consent to enter and in any event, did not want to cause problems and decided they would simply have them completed once they gained vacant possession.

The Tenants called into question the authenticity of the Landlord's testimony that they have applied for a demolition permit, as proof has not been served on them to that affect, and argued that in any event, the Landlord is required to actually have the demolition permit before they serve the Four Month Notice and before they are granted

an Order of Possession, which they do not have. Further to this, the Tenants raised concerns that the Four Month Notice may not have been served on them in good faith, as the Landlord previously told them that they wanted to move into the rental unit and attempted to end their tenancy by way of a verbal One Month Notice given on June 2, 2021, because the Landlords wanted to "build a home there eventually". Further to this, the Tenants stated that they are aware the Landlord has sold their current residence, which calls into question the truthfulness of their statements that they are planning to demolish the rental unit rather than reside there themselves.

The Landlord denied the Tenants' allegations that they are not acting in good faith and stated that the documentary evidence before me, including proof they have applied and paid a substantial amount for a building permit for a new home on the site of the rental unit, clearly establishes that they are intending to demolish the rental unit and build a new home in its place. While the Landlord acknowledged that they have sold their current residence, they stated that the also own another home, where they will live until the rental unit is demolished and the new home is built.

The Tenants submitted copies of text messages with the Landlord, documents from the municipality regarding permits and Land Development Applications at the rental unit address, a copy of the tenancy agreement, and a copy of the Four Month Notice for my review and consideration. The Landlord also submitted a copy of the tenancy agreement and the Four Month Notice, along with copies of text messages with the Tenants, email correspondence with the municipality regarding their change of address request and the status of their building permit, a fee slip and receipt for the cost of their building permit, etransfer receipts and a letter to the Tenants attempting to settle or resolve the matter.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies exists between the parties, the terms of which are set out in the tenancy agreement in the documentary evidence before me.

Section 49(6)(a) of the *Act* states 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 the rental unit. Section 49(7) of the *Act* states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy].* Further to this, section 49(8)(b) of the *Act* states that a tenant may dispute

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

Based on the affirmed and undisputed testimony of the parties, I am satisfied that the Landlord served the Four Month Notice on the Tenants by placing it in their mailbox on June 27, 2021, and that the Tenants received it the following day on June 28, 2021. As the Tenants filed the Application seeking cancellation of the Four Month Notice on July 21, 2021, I find that they applied on time.

Although the Landlord repeatedly referenced a permit to build a new home at the hearing, I find that the matter before me for determination is not whether the Landlord has approval from the municipality in which the rental unit is located to build a new dwelling, but rather whether the Landlord had, at the time the Four Month Notice was served on the Tenants, all the permits and approvals required by law to demolish the rental unit and a good faith intention to do so, as set out under section 49(6)(a) of the *Act*. For the following reasons I am not satisfied on a balance of probabilities that they did.

Although the Landlord stated at the hearing that they had applied for a demolition permit, no documentary evidence in support of this testimony was submitted for my review and consideration and the Landlord could not provide me with the date of this application. As a result, the Landlord has failed to satisfy me on a balance of probabilities that they have even applied for a demolition permit. Further to this, the Landlord acknowledged at the hearing that as of today's date, they had neither the demolition permit nor all of the necessary documents and assessments required to obtain the demolition permit, such as an asbestos report and a pest control report. At the hearing the Landlord argued that these could not be completed until they had vacant possession of the rental unit as the Tenants had not agreed to allow them entry, but the Tenant's disagreed. The Tenants stated that the Landlord had advised them that these would be necessary, but that the Landlord had never provided them with proper notice for these entries, which is why they were not completed. The Tenants pointed to copies of text messages submitted for my review and consideration in support of this testimony. The Tenants stated that although they were generally very accommodating with regards to entry requests, even those that did not meet the requirements of the *Act*, they had specifically requested that the Landlord give them proper notice for those inspections, as they felt that they were more intrusive and extensive in nature and wanted to make appropriate arrangements.

When asked, the Landlord acknowledged that they had not provided proper notice under section 29 of the *Act* or obtained the Tenants' permission for entries to the rental unit for the purpose of asbestos and pest control assessments and indicated their misunderstanding that they needed the Tenants' permission to enter. Further to this, the Landlord stated that they did not wish to cause any fights with the Tenants and so therefore planned to have these assessments completed once they obtained vacant possession of the rental unit.

Section 29(1)(b) of the *Act* specifically states that a landlord may enter the rental unit for a reasonable purpose if they have provided notice of the entry in writing at least 24 hours and not more than 30 days in advance of the entry, provided the written notice includes the purpose for the entry and a date and time for the entry, which must be between 8:00 AM and 9:00 PM unless otherwise agreed to by the tenant(s). As a result, I find that the Landlord's failure to schedule the assessments necessary to be granted a demolition permit are the result of either their own misunderstanding of the application of section 29 of the *Act,* or their intentional failure to issue notice(s) of entry under section 29 as required, and their desire to avoid conflict, rather than a legitimate inability to have these completed while the rental unit is occupied by the Tenants.

As a result, I find that the Landlord has failed to satisfy me on a balance of probabilities that they have been granted a demolition the permit or that they have even completed all the necessary steps to obtain the permit which can reasonably be completed while the rental unit is occupied, as by their own admission they have not yet had the rental unit inspected for asbestos or pets, as required by the municipality for the issuance of a demolition permit. I also do not accept the Landlord's position that they could not have had the rental unit inspected for asbestos and pests, as required by the municipality, while the rental unit was occupied, and I find as fact that their failure to do so was the result of their own actions or inactions. As a result, I find that the Landlord does not have grounds to end the tenancy pursuant to section 49(6)(a) of the *Act*, and I grant the Tenant's application seeking cancellation of the Four Month Notice. The Four Month Notice is therefore cancelled and of no force or effect and I order that the tenancy continue until it is ended by one or both of the parties in accordance with the *Act*.

As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee. Pursuant to section 67 of the *Act*, I therefore grant the Tenants a Monetary Order in the amount of **$100.00** and I order the Landlord to pay this amount to the Tenants or allow the Tenants to otherwise recover this amount through a rent reduction.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$100.00**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing the Monetary Order, the Tenants are permitted to deduct $100.00 from the next months rent due under the tenancy agreement, should they wish to do so.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 22, 2021

Residential Tenancy Branch