Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, PSF, CNL-4M

Introduction

This hearing dealt with the tenants' 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;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants, the tenants' advocate and the landlord 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.

Both parties agree that the tenants served the landlord with this application for dispute resolution and evidence via registered mail. I find that the above documents were served on the landlord in accordance with sections 88 and 89 of the *Act.*

Both parties agree that the landlord served the tenants with the landlord's evidence by leaving a copy in the tenants' mailbox sometime between October 25-29, 2021. I find that the landlord's evidence was served in accordance with section 88 of the *Act.*

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the "Four Month Notice") and the continuation of this tenancy are not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Four Month Notice.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Four Month Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the Four Month Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Are the tenants 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. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 20, 2018 and is currently ongoing. Rent is $900.00 per month, $450.00 payable on the first of every month and $450.00 payable on the 15th of every month. A security deposit of $450.00 was paid by the tenants to the landlord.

The landlord testified that the Four Month Notice was sent to the tenants via registered mail on June 22, 2021. Tenant R.S. testified that she received the first two pages of the Four Month Notice on June 23, 2021 via registered mail. The advocate submitted that the tenants did not receive the third and fourth pages of the Four Month Notice which provide information to the tenants about disputing the Four Month Notice and compensation to be paid to the tenants. The landlord testified that if she did not send all four pages, she is sorry and that it was not done intentionally.

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 Four Month Notice states:

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

The landlord testified that the house was built in 1925 and has had lots of repair issues. The landlord testified that she received a notice from the City that stated that secondary suites must be brought up to code. The landlord testified that she plans to gut the subject rental property to re-do the sub-floors, expand the bathroom into space previously occupied by the kitchen and update the pluming.

The landlord testified that she called the City and that they told her that at this stage, no permits are needed. No proof of the above conversation was entered into evidence. The landlord testified that she has hired a contractor to do the required work. The landlord testified that she is not a builder and has not pulled any permits and that her contractor will pull them as needed.

The advocate submitted that by the landlord's own evidence, it is clear that permits are required for the proposed work and that the landlord has not received the required

permits. The advocate pointed to a document entered into evidence by the landlord from the City in question titled “Secondary Suites”, which states in part:

> Getting an occupancy permit for a pre-existing suite is just like building a new suite. Information must be provided to our team through the building permit process to ensure that the secondary suite meets the BC Building Code requirements.

The advocate submitted that the landlord has not provided any evidence to prove that permits are not necessary. The advocate submitted that she looked at the website of the City in question and that it stated that plumbing permits are required for pluming work and that the landlord has not received the permits necessary for the proposed work.

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.

Residential Tenancy Policy Guideline 2B (PG #2B) states:

> When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they 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….. 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.

I find that the landlord has not proved, on a balance of probabilities, that permits are not required for the proposed renovation, contrary to PG#2B. Given the large scope of the work planned by the landlord, I find, on a balance of probabilities, that the work will require permits. Based on the testimony of the landlord, I find that the landlord has not yet obtained those permits.

I find that the landlord failed to prove, 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 landlords are not entitled to an Order of Possession for Demolition, Renovation, Repair or Conversion of Rental Unit.

I accept the tenants' testimony that they only received pages 1-2 of the Four Month Notice. In order to be effective, the entire Four Month Notice was required to be served on the tenants. For this reason, in addition to the reasons stated above, the Four Month Notice is cancelled and of no force or effect.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct $100.00, on one occasion, from rent due to the landlord.

Conclusion

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

The tenants are entitled to deduct $100.00 on one occasion from rent due to the landlord.

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: November 23, 2021

Residential Tenancy Branch