



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Naramata Centre Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL – 4M, CNC, OPC

Introduction

This hearing dealt with the tenant's application for cancellation of a *Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use* ("4 Month Notice") and a One Month Notice to End Tenancy for Cause ("1 Month Notice") and the landlord's application for an Order of Possession for cause. The hearing was held over two dates. An Interim Decision was issued on December 10, 2021 and should be read in conjunction with this decision.

Both the landlord's agent and the tenant appeared for both hearing dates. The parties were affirmed and the parties were ordered to not make an unofficial recording of the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the reconvened hearing, the landlord requested withdrawal of the 1 Month Notice and the tenant consented to the withdrawal. Where a notice to end tenancy is withdrawn by mutual consent, the notice is no longer of any force or effect. As such, I find the tenant's request for cancellation of the 1 Month Notice and the landlord's application for an Order of Possession for cause to be moot and those remedies are dismissed.

In light of the above, the balance of this decision deals with the tenant's request for cancellation of the 4 Month Notice.

Issue(s) to be Decided

Should the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit be upheld or cancelled?

Background and Evidence

The parties' initial tenancy agreement for the rental unit started in September 2013 on a month to month basis. The parties entered into a second tenancy agreement for a fixed term of May 1, 2016 through April 30, 2017 requiring the tenant to vacate the rental unit at the end of the fixed term. The parties entered into a third tenancy agreement for a fixed term starting May 1, 2017 and ending January 31, 2018. Both parties were in agreement that the tenancy agreement that started May 1, 2017 is the last tenancy agreement entered into between the parties (this tenancy agreement is herein referred to as "the tenancy agreement").

The tenancy agreement provided for a fixed term set to expire on January 31, 2018 and the tenant to vacate the rental unit upon expiry of the fixed term. However, the Act was amended in December 2017 to make vacate clauses unenforceable except in very limited circumstances that did not apply to this tenancy. As such, the tenancy continued on a month to month basis upon expiry of the fixed term.

Neither party was certain as to the amount of the monthly rent payable by the tenant. The landlord estimated it was approximately \$987.00 due on the first of the month. The tenant believes it is more than but she was uncertain as to the exact amount as BC Housing pays a portion of the rent to the landlord.

The landlord served the tenant with the subject Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit ("4 Month Notice") with a stated effective date of November 30, 2021 by posting it to the door of the rental unit and emailing it to the tenancy on July 23, 2021. The tenant failed to dispute the 4 Month Notice within the time limit for doing so.

In completing the 4 Month Notice, the landlord indicated the reason for ending the tenancy is to: "convert the rental unit to a non-residential use", one of the reasons provided on a 4 Month Notice. In the section provided for describing permits, the landlord wrote: "The property has the correct zoning to change from residential to programming space."

In the section of the 4 Month Notice that provides space to describe the planned work, the landlord wrote the following:

Planned Work	Details of work
<p>We are now ready to move forward to convert the residential home back to a program space for our spiritual retreat Centre. We will start to incorporate this space into our retreats in the new year as a space of reflection through arts, movement and conversation.</p> <p>The tenant has been informed of this plan for the home numerous times over the years and we have an expired signed tenant agreement showing a signature by the tenant agreeing to end the tenancy. We also told the client again verbally in April of 2021, and the tenant has publicly acknowledged being told this eventual intent over the years.</p>	<p>Once the tenant vacates the property, the home will be converted back to a space to offer programs at the Naramata Centre. The Centre is losing program space through a publicly announced overall site redevelopment plan and needs to reclaim this space once more for programming. The tenant understood when she first moved in that the long term plan for this space was to return it to programming when the Centre was in a position to do so.</p> <p>We anticipate that the work to convert the space will begin during the month of December. The work will not require major renovations as it will be used simply as retreat programming space; however this notice is given to provide the required written notice under the Act.</p> <p>The land is zoned under a "Naramata Centre Zoning" with RDOS which is the same zoning used by all of our programming space therefore no additional zoning change is required.</p>

Landlord's position

The landlord is a society that operates a retreat centre on land describes as being 23 acres of land with 25 buildings. The society provides various programs on the land.

The landlord's agent submitted during the hearing that prior to the rental unit being used as rental accommodation, it was used as "program space" referred to as a "healthy healing house" that offered quiet one-on-one sessions, spiritual touch.

The retreat closed in 2015 and 2016 due to declining enrollment in programs and given there were several empty buildings on the property and financial difficulties faced by the society, the landlord decided to rent some of the buildings on a temporary basis. The retreat re-opened in 2017 and the tenancy agreement provided for a fixed term that specified there would be no further extensions of a tenancy. The landlord's agent submitted the fixed term tenancies, including the last one that provided for no further extensions or renewals, was in line with the landlord's intention to rent the unit temporarily and regain the rental unit as program space.

In 2019, the process of redeveloping the property was opened up to stakeholders to deal with the retreat's 23 acres and aging buildings. Also, a number of buildings have been or will be demolished and/or decommissioned resulting in fewer useable buildings for primary programs offered by the society, which is why the landlord seeks to regain possession of the rental unit, to use as program space.

The landlord is motivated to secure the building space provided by the rental unit so that it may deliver its spiritual retreat services which is the primary mandate of the landlord, not to provide residential rental housing.

According to the landlord's agent, the tenant was informed on a number of occasions that the landlord's intent was to revert back to using the rental unit as programming space and that the tenant's use of the unit as living accommodation was not long term.

Documentary evidence provided in support of the landlord's position was a copy of the property zoning, including its permitted uses. Below, I have provided excerpts of the zoning by-law for the subject land:

16.2.1 Permitted Uses:

Principal uses:

- a) church;
- b) educational centres and meeting room facilities;
- c) tourist cabin;
- d) campground;

Secondary uses:

- e) dormitory;
- f) accessory dwelling, subject to Section 7.11;
- g) accessory buildings and structures, subject to Section 7.13.

16.2.5 Maximum Number of Dwellings Permitted Per Parcel:

- a) one (1) accessory dwelling unit.

Tenant's position

The tenant submitted that the landlord does not need the rental unit to provide its programs as there are many buildings on the property that could be used. The tenant has a site plan that shows the rental unit building as being "surplus" which the tenant interprets to mean the landlord does not need the rental unit for its programming needs. Although the tenant acknowledged that a building on the property has been decommissioned, the tenant submitted that there are several other buildings that remain useable on the property. Further, the landlord has stated that the buildings are going to be torn down for the last three years but does not go through with it, or proceeds to renovate a condemned building.

The tenant is of the position that the landlord has a bad faith intention to end the tenancy to avoid making repairs to the rental unit. The tenant submitted that she made several requests for repairs and the landlord is reluctant to make them. One board member told the tenant that they do not intend to spend money fixing the rental unit. The tenant pointed to the timing of her request for repairs and receiving the 4 Month Notice as indication of the landlord's true motivation to end the tenancy.

The tenant submitted that while the landlord takes the position it is not in the business of providing rental accommodation, the landlord has done so for 8 years for this particular

tenant and the rental unit was tenanted before her tenancies began. There are also other rental units located on the property.

The tenant provided copies of the three tenancy agreements she entered into with the landlord; several email exchanges between the parties whereby the tenant is requesting repairs; a site plan of the property; a listing of the Board of Directors for the society; and, a board report from 2019 indicating surplus lands may be sold to raise funds to repay debt.

Landlord's response

The landlord's agent stated that other people living on the property are staff persons except for one other tenant. The tenant's description of other people living in the rental unit prior to her tenancies were staff people when the building was not used for program space. The landlord refuted that there are several useable and suitable buildings for its "healthy healing" program, which the landlord seeks to resume in the rental unit, given the demolition and/or decommission of other buildings and other programs offered at the retreat.

Tenant's final response

The tenant argued there is more than one other tenant on the property, other than staff. The tenant remains of the position that there are sufficient buildings available for the landlord to offer its programs.

Finally, ending the tenancy will create dire financial hardship for the tenant.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice. The burden of proof is on the balance of probabilities as provided under Rule 6.6 of the Rules of Procedure.

The 4 Month Notice issued by the landlord in this case, is in the approved form and is duly signed and completed. Accordingly, I find it meets the form and content requirement of the Act and it is otherwise a valid notice.

The 4 Month Notice provides a reason for ending a tenancy that is found in paragraph 49(6)(f) of the Act. Section 46(6) provides as follows:

(6) 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 do any of the following:

- (a)demolish the rental unit;
- (b)[Repealed 2021-1-13.]
- (c)convert the residential property to strata lots under the *Strata Property Act*;
- (d)convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f)convert the rental unit to a non-residential use.

[My emphasis underlined]

As set out in section 49(6)(f), I find the landlord has the burden to prove three things:

1. That the landlord intends to convert the rental unit to a non-residential use;
2. That the landlord has a good faith intention to convert the rental unit;
3. That the landlord has all necessary permits and approvals required by law to convert the unit.

The landlord provided a copy of the zoning by-law that includes permitted uses at the property. Based on the landlord's description to convert the rental unit to a "healing house" for quiet spiritual sessions, I accept the landlord's statement on the 4 Month Notice that major renovation or changes to the building would not be done and permits are not required. Accordingly, I focus the remainder of my analyses on the landlord's intention to convert the rental unit to a non-residential use, and the landlord's good faith intention in doing so, if necessary.

Residential Tenancy Policy Guideline 2b provides information and policy statements with respect to ending a tenancy by way of a 4 Month Notice. Below, I have reproduced the section that deals with ending a tenancy to convert the rental unit to a non-residential use:

F. CONVERTING TO A NON-RESIDENTIAL USE

Non-residential use means something other than use as living accommodation. However, sometimes use as a living accommodation is secondary, incidental or consequential to a non-residential use. For example, correctional institutions are facilities that incarcerate persons convicted of criminal offences – a non-residential use – but they also provide living accommodation to incarcerated persons. Similarly, community care facilities provide 24-hour institutional care to persons and, in doing so, must also provide living accommodation to those persons. These facilities are considered non-residential even though they provide living accommodation because this use is consequential to their primary institutional use.

Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office. Some live/work spaces may also be considered non-residential if the majority of the unit must be devoted to commercial enterprise based on municipal requirements: *Gardiner v. 857 Beatty Street Project*, 2008 BCCA 82.

Holding the rental unit in vacant possession is the absence of any use at all. A landlord cannot end a tenancy for non-residential use to leave the rental unit vacant and unused.

The policy guideline also provides the following with respect to the good faith requirement:

GOOD FAITH

In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy

agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1) of the RTA).

In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: Steeves v. Oak Bay Marina Ltd., 2008 BCSC 1371.

If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

[My emphasis underlined]

The landlord described the intended use of the rental unit as being a “healing house” or similar program that provides program participants with a quiet area for healing sessions and not living accommodation. As such, I accept this use would be a non-residential use.

While I accept that the use described by the landlord is non-residential and does not require permits or approvals by law, I find the landlord has not provided sufficient corroborating evidence with respect to its intention to convert the unit rent to the described use. I make this finding considering the following factors.

The tenant submitted documentation demonstrating the landlord is governed by a board of directors and a site plan showing the rental unit as being surplus land that may be considered for sale. While the documentation is dated, from 2019, the landlord did not provide documentary evidence to refute the tenant’s evidence and support the landlord’s position. Considering the rental unit has been tenanted for several years, since at least 2013, I would expect a change in use to a program space would have generated documentation reflecting communication involving the Board of Directors, such a meeting minutes; and/or communication with stakeholders and board members or the landlord’s staff persons concerning the plans for the rental unit such as emails or

memorandums. In the absence of such corroborating evidence from the landlord and faced with the tenant's evidence showing a potentially different use of the rental unit, such as a sale of the property, I find I am unsatisfied the landlord has met its burden to demonstrate the tenancy should end at this time for the reason stated on the 4 Month Notice served to the tenant. Therefore, I grant the tenant's request for cancellation of the subject 4 Month Notice and the tenancy continues at this time.

Conclusion

The 4 Month Notice is cancelled and the tenancy continues at this time.

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: March 30, 2022

Residential Tenancy Branch