



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants on June 1, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit (the Four Month Notice);
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on February 22, 2022, and was attended by the Landlord and the Landlord's spouse J.H., both of whom provided affirmed testimony. The Tenants did not attend. The Notice of Dispute Resolution Proceeding (NODRP) states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note that the Landlord and their spouse were able to attend the hearing promptly using the information contained in the NODRP.

Although the Landlord stated that the Tenants never served them with a copy of the NODRP for either the first hearing on September 30, 2021, or this hearing, as required, and that they only received a courtesy copy from the Residential Tenancy Branch (the Branch) after contacting the Branch in response to an auto-generated email, the Landlord none the less attended the hearing at the scheduled time, ready to proceed. Branch records show that the original hearing was scheduled for September 30, 2021,

at 11:00 A.M., that only the Tenants attended that hearing, and that an interim decision was rendered by the arbitrator of that hearing, adjourning the matter to allow the Tenants an additional opportunity to serve the Landlord with the NODRP as required, as they stated at that hearing that it had not been served. Branch records show that the interim decision and the new NODRP was emailed to the Tenants on October 1, 2021, and the interim decision specifically states that the Tenants are to serve the NODRP on the Landlord. Further to this, Branch records show that the Tenants called the Branch on October 6, 2021, with regards to withdrawing the Application, and were provided information on how to withdraw, including the need for the Landlord's consent. No further action was taken on the part of the Tenants to withdraw the Application.

Although another arbitrator conducted the original hearing on September 30, 2021, that arbitrator was not available to conduct the reconvened hearing and I find that they were not seized of the matter, as they heard none of the substantive issues. As a result, I find that I have the authority and jurisdiction to conduct the reconvened hearing. Despite the lack of service of the NODRP on the Landlord by the Tenants, the Landlord was able to obtain a copy of the NODRP, attended the hearing on time, and expressed their desire to continue with the proceeding so that they could obtain an Order of Possession for the rental unit. The Landlord was therefore provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 58 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither the Tenants nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration

regarding the Tenants' Application, I therefore dismiss the Tenants' Application seeking an Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, and recovery of the filing fee, without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to sections 49(6) and section 55(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 49 and 55 of the *Act*?

Background and Evidence

Although an incomplete copy of the tenancy agreement was submitted, at the hearing the Landlord stated that the one year fixed-term tenancy commenced on September 1, 2015, and has continued on a periodic (month-to-month) basis since the end of the fixed term. The Landlord stated that rent in the amount of \$1,150.00 was due at the start of the tenancy, and that rent is currently \$1,280.00 per month. The Landlord stated that rent is due on the first day of each month and that a security deposit in the amount of \$575.00 was required and paid, which they still hold in trust.

The Landlord stated that in January of 2021 there was flooding in the ceiling of the rental unit, and when the drywall was opened to investigate, it was determined that rats had chewed through a plastic water pipe, causing the leak. The Landlord stated that there was evidence of a serious rat infestation and so another section of the drywall was also opened in another area of the rental unit, revealing further infestation and damage. The Landlord stated that as a result, it was determined that all the drywall in the rental unit needs to be removed, so that the extent of the rat infestation and the damage done to piping and the electrical wiring can be investigated, as there are serious risks to the property due to the rodent damage, such as fire and further flooding.

The Landlord stated that the nature of the repairs required, such as the removal of all the drywall in the rental unit, and the time required for this to be completed, plus the time required to complete any necessary repairs to piping and electrical wiring, necessitates vacant possession of the rental unit. The Landlord stated that at this point,

no permits are required, as the drywall must all be removed, before the extent of damage can be determined, at which time permits will be obtained, if required.

As a result, the Landlord stated that the Four Month Notice was sent to the Tenants, by email, on May 30, 2021. The Four Month Notice in the documentary evidence before me is signed and dated May 30, 2021, has an effective date of September 30, 2021, and states that the tenancy is ending because renovations required are so extensive that vacant possession is required. On the Four Month Notice the Landlord indicated that no permits are required and that the drywall in the rental unit needs to be removed due to a rat infestation and a burst pipe.

No one appeared on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

I accept the Landlord's affirmed and undisputed testimony that a periodic tenancy to which the *Act* applies exists between the parties, the terms of which are set out above. I also accept the Landlord's affirmed and undisputed testimony that they have all the necessary permits and approvals required by law, and intend in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. At the hearing, the Landlord stated that the Four Month Notice was emailed to the Tenants on May 30, 2022. The Tenants filed the Application seeking cancellation of the Four Month Notice on June 1, 2021, and in the Application they indicated that the Four Month Notice was received on May 30, 2021. Pursuant to section 71(2)(b) of the *Act*, I therefore find that the Four Month Notice was served on the Tenants for the purposes of the *Act*, on May 30, 2021. As a result, I find that the Tenants disputed the Four Month Notice within the legislative period set out in section 49(8)(b) of the version of the *Act* that was in force at the time the Four Month Notice was served, and therefore conclusive presumption under section 49(9) of the *Act* does not apply.

Although an amendment to the *Act* on July 1, 2021, means that landlords can no longer serve a notice to end tenancy for the purpose of renovations or repairs, and must instead file an Application for Dispute Resolution with the Branch seeking an Order of Possession for this purpose, the version of the *Act* in force at the time the Four Month Notice was served stated, under section 49(6)(b), 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Based on the above, I therefore dismiss the Tenants' Application seeking cancellation of the Four Month Notice. As I am satisfied that the Four Month Notice complies with section 52 of the *Act*, and the effective date of the Four Month Notice has passed, I therefore grant the Landlord and Order of Possession for the rental unit effective two days after service on the Tenants, pursuant to sections 55(1) and 68(2)(a) of the *Act*.

Conclusion

The Tenants' Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 2, 2022

Residential Tenancy Branch