



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Edge Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Notice) issued by the landlord; and
- recovery of the filing fee.

The tenants and the landlord's agent (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

The parties confirmed receiving the other's evidence and the landlord confirmed receiving the tenant's application.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments

are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

- Should the Notice be cancelled?
- If the Notice is not cancelled, is the landlord entitled to an order of possession for the rental unit?
- Are the tenants entitled to the recovery of the cost of the filing fee?

Background and Evidence

This tenancy began on January 1, 2008, beginning monthly rent was \$700, the current monthly rent is \$959, and the tenants paid a security deposit of \$350. The tenants submitted a copy of the written tenancy agreement, which listed another landlord, a limited company.

The undisputed evidence is that the landlord served the tenants with the Notice on October 25, 2021, by personal service.

The tenants filed their application to dispute the Notice on November 25, 2021.

The parties filed a copy of the Notice, which was signed by the landlord's agent on October 25, 2021, and listed an effective date of February 28, 2022. The landlord listed on the Notice that they are going to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord submitted that they purchased the residential property after this tenancy began, which took effect in December 2019. The landlord explained that they already had one resident caretaker, but they were experiencing a need for another resident caretaker, in relief. The needs of the apartment building had become too great for one

caretaker, and they have experienced a benefit in their other residential properties when having two sets of resident managers.

The landlord submitted that the decision to hire another resident caretaker was not taken lightly and was after extensive consideration, but the decision was made in order to have a positive impact on the tenants in the property, who had an average age of 83.

The landlord submitted that they hired someone who worked on the owning company's property in another province, who had agreed to accept the job.

The landlord submitted a copy of that caretaker's written tenancy agreement, for tenancy start date of April 1, 2022, and a written terms of employment, such as hours of work. I note the hours were part time and were in relief of the full-time resident manager/caretaker.

Tenant's response –

The tenant submitted that their rental unit was rented out to the new caretaker before the dispute began.

The tenant submitted that the landlord's Notice was issued so that the landlord could increase the rent. The tenant submitted that the written tenancy agreement on the proposed caretaker shows the monthly rent was doubled.

The tenant submitted that there was a rental unit directly behind their rental unit which was identical to their rental unit, which had been empty. The rental unit was remodeled and rented out for double the rent.

The landlord submitted that the rental unit referred to by the tenant became available in August 2021, was re-rented in September 2021, and was occupied by October 1, 2021.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (6) (e) 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, convert the rental unit for use by a caretaker, manager or superintendent of the residential property. In this case, I accept the landlord would not be required to obtain permits or approvals and the issue was not raised at the hearing.

When a tenant disputes a Four Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Residential Tenancy Policy Guideline 2 provides good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid their obligations under the Act.

Upon review of the Four Month Notice to End Tenancy dated and issued on October 25, 2021, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act.

After hearing from the landlord, I find that they genuinely intend to have a relief caretaker/manager live on the property.

I find the landlord's evidence that they require a second resident manager/caretaker to relieve the primary resident manager/caretaker to be reasonable. I find the landlord's decision was a business decision, taking into consideration their experiences with the same model on their other residential properties. I find it reasonable that the primary resident manager would not be able to be on call 24 hours a day, each and every day of the year. I accept the landlord's submissions that having an additional resident manager/caretaker would benefit the tenants of the residential property.

While a higher rent may be a consequence of the landlord's hiring a relief caretaker/manager, I do not find it an ulterior motive. In reviewing the terms of the new caretaker's tenancy agreement and terms of employment, the new employee will be paying less than the tenants are currently paying here, taking into consideration the monthly rent reduction and phone allowance.

When considering the relevant evidence, I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice.

Based on the above, I find the landlord has provided sufficient evidence to prove they truly intend to use the rental unit for the purpose stated on the Notice and that the Notice was issued in good faith.

I therefore find the Notice is valid and enforceable.

As such, I **dismiss** the tenants' application seeking cancellation of the Notice and recovery of the filing fee, **without leave to reapply**.

I **order** the tenancy ended on the effective date of the Notice, or February 28, 2022.

Under Section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit, effective **two (2) days after service on the tenants**.

Should the tenants fail to vacate the rental unit within two (2) days after service, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenants.

Conclusion

The tenants' application seeking cancellation of the Notice and to recover the cost of the filing fee is dismissed without leave to reapply as I have found the Notice to be valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective two (2) days after service upon the tenants.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.