



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 5, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Four Month Notice to End Tenancy for Demolition, or Conversion (the "Four Month Notice") dated January 28, 2022; and
- an order granting the return of the filing fee.

The Tenant, the Landlord, and the Landlord's Agent N.S. attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised with respect to service, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Four Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Four Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The Tenant stated that her tenancy began on September 1, 2013. The Landlord confirmed that he purchased the rental property around 6 years ago and that the parties have since signed a new tenancy agreement on March 1, 2021. Currently, rent in the amount of \$2,000.00 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which is currently being held by the Landlord.

The Landlord's Agent stated that the Tenant was served with the Four Month Notice on January 28, 2022 with an effective vacancy date of May 31, 2022 by posting it on the Tenant's door. The Landlord's Agent stated that the purpose of the Four Month Notice is to gain vacant possession of the rental unit to perform extensive renovations and repairs to the rental unit including kitchen, bathroom, floors, and doors.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Residential Tenancy Branch Website Offers the following information:

Effective July 1, 2021, under new legislation, if a landlord wants to end a tenancy for extensive renovations or repairs, they need to apply for an Order of Possession from the Residential Tenancy Branch. There will be a dispute resolution proceeding where an arbitrator will decide if ending the tenancy is the only way to complete this work. Any notice received on or after July 1, 2021 is invalid and the landlord must end the tenancy under the new process by applying to the Residential Tenancy Branch. More information can be found at: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/renovictions>

According to the Residential Tenancy *Act*; **Director's orders: renovations or repairs**

49.2 (1) Subject to section 51.4 [*tenant's compensation: section 49.2 order*], a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- (b) the renovations or repairs require the rental unit to be vacant;
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) An order granted under this section must have an effective date that is

- (a) not earlier than 4 months after the date the order is made,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

According to the Residential Tenancy Policy Guideline 2B;

Section 49(6) of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to: a) demolish the rental unit; b) convert the residential property to strata lots under the Strata Property Act; c) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act; d) convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or e) convert the rental unit to a non-residential use.

Section 49.2 of the RTA (in effect as of July 1, 2021) allows a landlord to apply for an order to end the tenancy and an order of possession if all of the following apply: a) the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit(s) b) the renovations or repairs require the unit(s) to be vacant c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit(s) or the building in which the rental unit(s) are located d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

If an arbitrator is satisfied that all of these criteria are met, then they must grant an order ending the tenancy and issue an order of possession. Such an order must not end the tenancy earlier than 4 months after the date it was made.

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application. The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals.

A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit. The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion.

A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land. If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

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.

In this case, I find that the Landlord was required to submit their Application for an Order of Possession for the purpose of Renovations to the rental unit. Instead, the Landlord served the Four Month Notice to the Tenant which in the improper process pursuant to the Act and Policy Guidelines outlined above. As such, I find that the Four Month Notice dated January 28, 2022 is invalid and therefore cancelled.

I find that the Tenant's Application is successful, and I order that the tenancy continue until it is ended in accordance with the *Act*. As the Tenant was successful with their Application, I find that they are entitled to recover the filing fee paid to make the Application. I order that the Tenant deduct \$100.00 from her next rent payment.

Conclusion

The Tenant's application is successful. The Four Month Notice issued by the Landlord dated January 28, 2022 is invalid and therefore cancelled. The tenancy will continue until ended in accordance with the Act. The Tenant is permitted to deduct \$100.00 from her next rent payment which represents the return of the filing fee.

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: May 10, 2022

Residential Tenancy Branch