



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFT
 OPC, FFL
 CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenants and 1 application made by the landlords, which have been joined to be heard together.

In the first application, the tenants name 1 landlord and seek an order cancelling a Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

In the second application, the tenants name both landlords and seek an order cancelling a One Month Notice to End Tenancy for Cause; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

The landlords have applied for an Order of Possession for cause and to recover the filing fee from the tenants.

Both landlords and both tenants attended the hearing and the tenants were accompanied by a person to assist, who did not testify or take part in the hearing.

One of the landlords and both tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The hearing did not conclude within the time allotted, and I adjourned the hearing to continue later in the day. The parties attended again, however the tenants' assistant did not return for the afternoon session.

During the course of the hearing, one of the tenants applied to amend one of the tenants' applications to correct the surname, and the frontal page of this Decision reflects that amendment.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it, or should it be cancelled?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, specifically with respect to the issuance of notices to end the tenancy?

Background and Evidence

The landlord testified that this month-to-month tenancy began in March, 2014 with one of the tenants (FS), who had 3 previous roommates that have vacated, and another roommate (JM) now resides with the tenant in the rental unit. Rent in the amount of \$1,000.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the original tenant (FS) in the amount of \$600.00, and the \$100.00 overpayment as returned to the tenant. No pet damage deposit was collected, and there is no written tenancy agreement. The rental unit is a basement suite, and the upper level of the rental home is currently vacant.

The landlord further testified that on February 28, 2022 the landlord personally served the tenant (FS) with a Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use. Only 2 pages of the 4-page form have been provided for this hearing. It is dated February 28, 2022 and contains an effective date of vacancy of June 30, 2022. The form states: I am ending your tenancy because I am going to: (check a box that applies), however none of the boxes have been checked. The only checkmark states: "I have obtained all permits and approvals required by law to do this work. Please complete the information below." The section below shows that the

landlord obtained a permit on February 28, 2022 by the Regional District to decommission the suite, with a permit number. It also states that the planned work is to decommission the suite, and details of work states "Items required by Regional District to decommission suite."

The landlord further testified that the basement suite has to be decommissioned and cannot be legalized. The septic is over 15 years old and has to be re-done, then the landlords will have to apply for re-zoning and there is no guarantee it will be legal. The landlords do not have \$20,000.00 to do the work. The basement will be reverted to become part of the upper level as a single family dwelling.

The landlords have spoken to someone at the Regional District about decommissioning the suite as well as the Residential Tenancy Branch, who said that the landlords could give a Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use. The landlords were also told that Section 49.2 of the *Residential Tenancy Act* didn't apply because not all items could be answered with a "Yes."

On March 27, 2022 the landlords also served each of the tenants individually and personally with a One Month Notice to End Tenancy for Cause, and a copy has been provided for this hearing. It is dated March 27, 2022 and contains an effective date of vacancy of April 30, 2022. The reason for issuing it states: The rental unit/site must be vacated to comply with a government order.

The landlords have provided evidentiary material, and the landlord testified that the building permit is one document, and the order is another document. The permit is dated March 10, 2022 and shows the purpose of the project is removing an illegal basement suite, and conditions of the permit are to: "Remove stove wiring including breaker at panel, interconnect floors and smoke alarms, close furnace room access at bedroom, see email dated February 25." The order appears to be an information sheet respecting requirements in order to be compliant with the by-law.

The landlord also testified that the tenants did not serve the landlords with the Dispute Resolution documents, but served the landlords with the evidence for that dispute.

The landlords did a lot of leg work to try to make it legal, and are not benefitting from this. The tenants were advised in March that the tenants in the upper level were moving out, and the tenants asked if they could rent that suite. However, the landlord did not reply; the landlord didn't see how that would work with an increase and rent and security deposit and would have to then give 24 hours notice constantly for access so the landlords could do what was needed and didn't know how long it would take.

The Regional District letter received by the landlords by email stated that if the landlords were having difficulty with tenants, the time could be extended, however the landlords want to get it done.

The first tenant (FS) testified that the first notice to end the tenancy was a Four Month Notice, and the landlords were served with the dispute package. A week later, the landlords gave a One Month Notice. When the tenants got the first one on February 28, 2022, the tenant didn't know that he could dispute it.

There was no cause to issue the One Month Notice to End Tenancy for Cause; there was no order. The tenant went to the Regional District office, but they wouldn't provide any information, but the tenants were not given an order. There is no order to evict and no explanation about time-lines; it's just the landlord's word. Timing is the issue. There is nothing in the Regional District documentation showing that the tenants had to be out by the end of April; the landlords just picked a date. The tenant has lived there for 8 years, and arbitrarily having to be out by a certain date due to an order that the tenants have not received is not reasonable, nor to arbitrarily pick a date or give the second notice to end the tenancy.

As of July, 2021, Section 49.2 says that the landlord has to apply. Further, the landlords were aware of that on March 18 when the other tenant served the dispute. At that point, the landlords seemed surprised, and 9 days later gave the tenants another notice to end the tenancy.

The second tenant (JM) testified that he agrees that the notice to end the tenancy stated that the suite will be decommissioned, but there was no supporting documentation. Text messages from the landlords have been provided for this hearing stating that the landlords had decided to make it legal or decommission, but the tenants had no idea what they were going to do. The *Residential Tenancy Act* states that the landlords had to apply to see if the tenants could live through construction, and in the tenants' minds it is not a legal notice.

Then the landlord served the One Month Notice using "cause" as a government order. The tenant asked the landlords for that, but never received it.

The tenant missed giving the landlords the Notice of Dispute Resolution for the second application made by the tenants, since they were given the same hearing date and evidence for both applications, the landlords had been served.

All along the tenants tried to work with the landlords and the landlords' evidence shows that the landlords have 1 ½ years before the tenants have to move out. The tenants don't want to take that long, and are trying to find a place, but the landlords are dropping bomb shells on them.

The tenants have spent a lot of time to deal with this and are busy people; and have offered to relocate to another suite. However, the weekend of April 30, 2022 and 2 other weekends since, the landlords started to do some work. The landlords have removed the flooring and walls between the 2 levels, removing a partition in effect, and a portion of the storage for the rental unit.

SUBMISSIONS OF THE LANDLORDS:

The permit is only valid for 6 months. The landlords have commenced work upstairs, not in the basement except they needed to turn the water and breaker off, which were returned. The landlords moved the washer and dryer upstairs. The storage area of the rental unit was under the stairs.

The landlords called the Residential Tenancy Branch many times and followed through with information they received. No one ever said that the landlords had to apply because it is not a renovation of the suite; it's a decommissioning and the landlords had no idea that more forms might be required. The landlords were honest as possible and are not benefitting from this. The landlords only have 6 months to get it done and will have to remove the stove, wiring for the stove, breaker panel, and in order to do the work it needs to be vacant. The work will take about 2 months and the permit will expire, but can be renewed for another fee.

SUBMISSIONS OF THE TENANTS:

The landlords' evidence contains an email from the building inspector dated May 10, and the last paragraph states that the building permit the landlords took out on March 10 had 6 months but the Regional District would be agreeable to extend it for an additional year due to a current tenancy.

Currently there is no security, but an open area in the ceiling of the rental unit that looks into the front entrance of the upper level unit.

Analysis

In this case there are 2 notices to end the tenancy. The landlords have applied for an Order of Possession for a One Month Notice to End the Tenancy for Cause (hereafter referred to as the One Month Notice). The *Residential Tenancy Act* states that if a tenant

fails to dispute a One Month Notice within 10 days of service the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenants disputed it, but disputed the Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the Four Month's Notice) prior and the hearings were joined.

A party who files an application must serve the hearing package within 3 days of receiving a hearing date and documentation from the Residential Tenancy Branch. In this case, the tenants did not serve the hearing package but did serve the evidence for that application. The landlords became aware of the dispute and agree that the evidence was received. Considering that all 3 files have been joined to be heard together and the landlords were aware of the dispute, I find that the dispute should be considered, heard and deemed served.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Act*, which can include the reason(s) for issuing it.

The Four Months' Notice was given on February 28, 2022 and both parties have provided only pages 1 and 2 of the 4-page notice. The landlord testified that all 4 pages were served, however the *Act* requires that any notice given by a landlord must be in the approved form. Since neither party has provided the entire form I cannot be satisfied that it was in the approved form, and I cancel it.

I have reviewed the One Month Notice given on March 27, 2022, and I find that it is in the approved form. The reason for issuing it is in dispute: the rental unit/site must be vacated to comply with a government order, but no government order is attached. The landlords have testified that the order, marked as evidence "1g" is the order. However I have reviewed all of the evidence and no where is the word "order" made by the Regional District to the landlords. The documentation of the landlords includes instructions, a by-law and information about becoming compliant, but no order has been provided. I also agree with the tenants that the documentation provides the landlords with an extension, albeit with another fee. I am not satisfied that any government order exists, and I cancel the One Month Notice.

The tenants have also applied for an order that the landlords comply with the *Act* or the tenancy agreement. The tenants have also indicated that they are not opposed to moving out but the time-line of the landlords is unreasonable. I order the landlords to refrain from issuing a notice to end the tenancy due to an order unless an order has been obtained.

Since the tenants have been successful with the applications, the tenants are also entitled to recovery of the filing fees, totaling \$200.00. I grant a monetary order in favour of the tenants in that amount and I order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed.

The Four Month's Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated February 28, 2022 is hereby cancelled.

The One Month Notice to End Tenancy for Cause dated March 27, 2022 is hereby cancelled and the tenancy continues.

I hereby order the landlords to comply with the *Residential Tenancy Act* by refraining from attempting to end the tenancy due to a government order until such order has been obtained.

I hereby grant a monetary order in favour of the tenants in the amount of \$200.00 and I order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 24, 2022

Residential Tenancy Branch