



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order to cancel a Four-Month Notice to End Tenancy signed February 17, 2022 (the “Four-Month Notice”) pursuant to s. 49; and
- Return of his filing fee pursuant to s. 72.

J.F. appeared as Tenant. R.B. appeared as Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord indicates that she served the Tenant with the Four-Month Notice by way of registered mail, though could not recall when it was sent. The Tenant acknowledges receipt of the Four-Month Notice on March 5, 2022 by way of registered mail, which the Landlord indicates corresponds to when she recalls sending it. I find that the Landlord served the Four-Month Notice in accordance with s. 88 of the *Act* and was received on March 5, 2022 as acknowledged by the Tenant.

The Tenant indicates that he served the Notice of Dispute Resolution and his evidence on the Landlord by way of registered mail. The Landlord acknowledges receipt of the same. I find that the Tenant’s application materials were served in accordance with s. 89 of the *Act* as acknowledged by the Landlord.

The Landlord indicates that her response evidence was served on the Tenant by way of registered mail. The Tenant acknowledges receipt of the same. I find that the Landlord’s

evidence was served in accordance with s. 89 of the *Act* as acknowledged by the Tenant.

Issue(s) to be Decided

- 1) Should the Four-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Tenant entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant advised with respect to the following details of the tenancy:

- He took occupancy of the rental unit on January 15, 2009.
- Rent of \$700.00 is payable on the first day of each month.
- A security deposit of \$350.00 was paid at the beginning of his tenancy.

The Landlord confirmed that, to her knowledge, those details were correct. I was advised by the Landlord that the residential property was purchased by her approximately one-year ago. The Landlord describes the residential property as a multi-unit building in which the main floor has 3 commercial rental units and the upstairs has two residential rental units, one of which is occupied by the Tenant. The Landlord estimates each floor is approximately 4,000 ft².

The Four-Month Notice, which was put into evidence by both parties, indicates it was being issued because the rental unit was being converted for use by a caretaker or manager for the residential property. The Landlord says that she intends for a manager or caretaker to move into the Tenant's rental unit, thus permitting them to provide on-site care and management of the property. The Landlord further described how this arrangement would ensure there would be no trespassers on the property or unauthorized vehicles parking on the property. The Landlord advised that she lives in the same community as the residential property. She indicates that she is not well placed to look after the property and that it would be best to have someone on-site.

The intention is for the caretaker or manager to live within the rental unit currently occupied by the Tenant. The Landlord further advises that she has not sought found a resident caretaker and has not yet placed an advertisement for one as the Tenant has disputed the Four-Month Notice.

The Landlord advised that there is a property manager for the other residential rental unit, though indicates that that property manager does not look after commercial properties. Emails from July 2021 provided by the Landlord indicate that rent was to be paid to the Landlord personally and not to the property manager for the adjacent residential rental unit.

The Tenant argues that the reason the Landlord is looking to end the tenancy is due to the amount of money he pays in rent. The Tenant indicates that his rental unit has three-bedrooms and is approximately 1,800 ft². This description was not specifically denied by the Landlord. The Tenant further advises that his current rent of \$700.00 has not been increased since 2009.

The Tenant advises that he had several conversations with the Landlord or her husband since the property was purchased with respect to increasing the rent. The Tenant says he would not agree to the rent increase they were seeking. The Landlord acknowledges having a conversation with the Tenant about increasing the rent he pays, though only on one occasion after she purchased the property. However, the Landlord says that after the Tenant did not agree, the matter was not pursued.

The Tenant further argues that the building does not need an on-site property manager. He advises that the previous landlord had a cleaner come in to vacuum the common areas of the property and periodically had landscapers attend. I was further advised that the adjacent residential rental unit was occupied by a friend of the previous owner, who did provide some bookkeeping assistance. The Tenant advises that he has not noticed any appreciable deterioration in the building's maintenance since the Landlord took possession of the property.

I am told that the former owner's friend moved out of the adjacent rental unit in July 2021. The Landlord confirmed that the rental unit has been re-rented for \$1,800.00 per month. The Landlord provides an assessment description of the property, which indicates that the other rental unit is a two-bedroom rental unit.

The Tenant further advised of a conversation he had with the Landlord's husband about how the Landlord's brother needed a place to live and was asking whether the Tenant intended to remain within the rental unit. The Landlord acknowledges that this took place given that her brother-in-law was in urgent need of housing, though he has since found alternate accommodations. The Tenant further advised that the Landlord's husband has asked whether the Tenant intends to reside in the rental unit and whether he would be moving on.

Finally, the Tenant indicates that the Landlord and her husband own multiple properties in the community. The Landlord did not respond to this point when I asked whether she had a response.

Analysis

The Tenant looks to cancel the Four-Month Notice and for return of his filing fee.

Pursuant to s. 49(6)(e) of the *Act*, a landlord may end a tenancy if they intend, in good faith, to convert the rental unit for use by a caretaker, manager, or superintendent for the residential property provide the landlord gives the tenant at least four months' notice. A tenant may choose to dispute a four-month notice to end tenancy but must do so within 30-days of receiving the notice. Upon filing an application to dispute a notice, the onus is on the landlord to show on a balance of probabilities that the notice was issued in compliance with the *Act*.

Notices to end tenancy issued under s. 49 impose a good faith requirement on the landlord. Policy Guideline #2B provides the following guidance with respect to the good faith requirement:

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.

Under the present circumstances, the Landlord indicates that the Four-Month Notice was issued on the rental unit would be converted for use by a caretaker, manager, or superintendent for the residential property. The Landlord submits to permits or approval for the conversion as none appear to be necessary. The plan, as explained by the Landlord, is simply to have a resident caretaker or manager occupy the Tenant's rental unit.

I accept the Landlord's characterization of the property as being one with three commercial rental units on the main floor with two residential rental units on the upper floor. I further accept the Tenant's characterization of his rental unit as being a three-bedroom rental that is approximately 1800 ft² in size. Neither party disputed the others characterization of the residential property or the rental unit.

The Landlord provides little evidence to support the necessity of having an on-site manager. I accept that the Landlord finds the property's maintenance is personally taxing and wishes to retain someone else to look after it. However, it does not follow that the building's maintenance requires an on-site property manager or caretaker. Indeed, the Landlord has retained a property manager for the adjacent rental unit. The present property manager does not reside at the property. The Landlord provides no evidence and little submission why alternate property management would be insufficient. The only point raised by the Landlord is that the present manager does not

look after commercial tenancies. It was not explained why the present property manager could not, at the very least, look after the Tenant's rental unit.

I am persuaded by the Tenant's argument that the property does not require extensive day-to-day care and accept his characterization that the previous owner had cleaners and landscapers attend the property periodically. The building is relatively small with a total of 2 residential tenancies and 3 commercial tenancies. I do not believe that the needs of the building or its tenants are such that it requires near daily attendance. Further, the Landlord has taken no steps at securing a resident caretaker nor has a caretaker or manager been retained to look after the commercial tenancies in the interim.

I consider the Tenant's evidence with respect to the former tenant in the adjacent rental unit being a sort of caretaker to the previous owner. The Tenant's characterization of the work conducted by the previous resident does not appear to be of a significant nature, being limited to bookkeeping. As mentioned above, cleaning and landscaping was done by third parties. The fact that the previous tenant helped the previous owner does not show that the residential property requires a resident manager or caretaker.

I am further persuaded by the Tenant's argument that the rationale for issuing the Four-Month Notice is linked to the Tenant's low-rent. The Tenant has a three-bedroom rental unit and pays \$700.00 for rent. The adjacent rental unit, which was rented to its current tenant sometime after July 2021, is a two-bedroom unit with rent at \$1,800.00. The Tenant says that the Landlord and/or her husband have discussed increasing the rent with the Tenant on multiple occasions since they purchased the property. The Landlord does not deny discussing a rent increase with the Tenant, only that it occurred once so far as she was aware.

I find that Landlord likely has an ulterior motive in ending the tenancy, being the likelihood that the rental unit could be re-rented for significantly more than what the Tenant is currently paying. I am further unpersuaded by the Landlord's argument that the property requires an on-site property manager. I find that the Landlord has failed to demonstrate that she intends, in good faith, to convert the rental unit for use by a caretaker, manager, or superintendent for the residential property.

I grant the Tenant's application and cancel the Four-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The Landlord has failed to demonstrate their good faith intention to convert the rental unit for use of a caretaker, manager, or superintendent. I find that the Landlord likely has an ulterior motive being the likelihood that the rental unit could be re-rented for significantly more rent than that currently paid by the Tenant. I grant the Tenant's application and hereby cancel the Four-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenant was successful in his application, I find that he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00. I direct pursuant to s. 72(2) of the *Act* that the Tenant withhold \$100.00 from rent on **one occasion** in full satisfaction of their 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 09, 2022

Residential Tenancy Branch