Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding A.ANZALI HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

The Tenants filed their Application for Dispute Resolution (the "Application") in this matter on March 16, 2022. They are seeking a cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the "Four-Month Notice") issued by the Landlord on February 28, 2022. They also seek the Landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on July 7, 2022. Both the Landlord and the Tenants (hereinafter the "Tenant") attended the hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the start of the hearing the Tenant confirmed they sent Notice of this hearing to the Landlord via registered mail including their prepared evidence. The Landlord confirmed they received evidence that was delivered the day before the hearing.

The Landlord delivered their evidence to the Tenant and the Tenant confirmed receipt of the same. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Four Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit pursuant to s. 55 of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both the Tenant and the Landlord confirmed the basic details of the tenancy agreement in the hearing. The tenancy started on May 1, 2020; the Tenant continues to pay $2,550 per month in rent. The Landlord provided that the Tenant was aware, from the start of the agreement, that the Landlord intended to demolish the rental unit building structure.

The Landlord attempted to end the tenancy previously for the same reason. In January 2022 a different Arbitrator ordered the cancellation of that separate Four-Month Notice because they decided the Landlord was missing a copy of the municipality policy/procedure "which establishes what the conditions are or sufficient evidence showing that the Landlord has completed all steps possible to meet the conditions [that must be met before the city will issue a demolition permit]."

The Landlord issued the Four-Month Notice on February 28, 2022 for the tenancy-end date of July 31, 2022. On page 2 of the document, the Landlord indicated the reason for ending the tenancy is that they wish to demolish the rental unit. The Landlord served this document to the Tenant by attaching the copy to the door of the rental unit.

In the hearing the Landlord referred to their individual piece of evidence which is the *Residential Tenancy Branch Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted* Use. The highlighted portion is:

> 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.

The Landlord described informing the municipality of their previous difficulties establishing a valid Four-Month Notice previously and underlined their need to go through the entire process again with their focus being accomplishing this "in good faith." They pointed to two emails from the municipality in their evidence; it is the Landlord's submission that this confirms the rental unit property must be vacant before the municipality can issue the permit.

The Landlord also provided a *Demolition Permit Policy* from the municipality containing highlights completed by a municipality staff member. The highlighted steps are: scheduling a

'site safety inspection', hazardous materials removal, and ensuring the authorization is posted on the "site safety fencing." Only after these steps have been completed will the municipality issue the Building Permit for Demolition. The Landlord summarily described this *Demolition Permit Policy* as being the one document that is the necessary item they must provide as per the *Residential Tenancy Branch Policy Guideline 2B*, the portion underlined above.

The Landlord also pointed to an email from the municipality dated November 19, 2021 to show that they had some materials already in place. In their response, the municipality confirmed: "In order for the hazardous material to be removed, the tenancy must vacate the building."

The Landlord referred to a June 24, 2022 letter from the municipality, highlighting six items, most of which require the Tenant's vacancy from the rental unit:

> The existing building at the above-referenced address is permitted to be demolished, subject to the following conditions:
>
> - Provide Notice of Project from WorkSafe BC
> - Obtain Manager's Approval Permit to proceed with removal of Hazardous Material
> - Install Site Safety Fencing and Noise Control Construction Signage
> - Ensure Utility Services (gas, power, water, sewer) have been severed
> - Provide Hazardous Materials Asbestos Clearance Letter
> - Provide Initial and Follow up Rodent and Avian Pest Control Report within 30 days of Demolition.

This letter was given to the Landlord when they consulted with the municipality in June 2022 and the Landlord referred to this as the "most updated" record showing the conditions needed before issuance of the permit. The Landlord at that time had most of the documentation in place.

In sum, the Landlord knows the requirement for permits to be in place but remains "stuck" because there are conditions that must be in place before a permit can be issued, and these conditions require vacancy. The Landlord provided a record of money paid thus far for all the applications and preliminary work done and this demonstrates the Landlord's true intention to go ahead with demolishing the property.

In response, the Tenant submitted that an inspection for asbestos does *not* require vacancy. This assertion was based on their consultation with asbestos removal specialists, with one firm even visiting. This would simply entail the Tenant having to leave to a few hours; however, in some cases with asbestos present a tenant *may still* be present in the unit yet other cases would require vacancy.

The Tenant also summed up their own discussion with the municipality, discovering that the Landlord's evidence is "a generic letter. . . a standard template". The Tenant agreed that the Landlord was taking steps; however, there are steps missing.

The Tenant stated they were open to the inspection; however, this does not entail them leaving as per the input they received from other asbestos-focused techs. Also, the chances of having asbestos are "nil", because the house is older than when asbestos popularly came into use.

The Tenant stated they understood the Landlord's intention to demolish the property and acknowledged that they knew about this since the start of the tenancy. They also acknowledged the Landlord's good reference for them to assist in finding another place to live.

In response to what they heard, the Landlord reiterated the June 21 email in response to Tenant's submissions: "The services [i.e., utilities] must be severed before demolition starts." The Tenant doesn't believe the Landlord is moving forward – so all documents and all procedures they engaged in with the municipality show their true intent on demolishing the rental unit property – this final point forms the basis for the Tenant's Application for the Landlord's compliance with the *Act* on serving a proper notice to end the tenancy.

Analysis

When a landlord issues a Four-Month Notice and a tenant files an application to dispute the matter, that landlord bears the burden of proving they have grounds to end the tenancy, and they must provide sufficient evidence to prove the reason for ending the tenancy. Additionally, that landlord bears the burden of showing they are acting in good faith.

In this case, the Four-Month Notice was issued pursuant to s. 49(6), and I find the Tenant received the document on February 28, or in any event by March 3, 2022 as per s. 90(c) of the *Act*. The Tenant filed their Application on March 16; therefore, I find they disputed the Four-Month Notice within the timeframe required under the *Act*.

The *Act* s. 49(6), regarding a Four-Month Notice, stipulates:

> (6)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 do any of the following:
>
> (a) demolish the rental unit;

As per the *Residential Tenancy Policy Guideline 2B*, which the Landlord excerpted in their evidence, the 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.

As the Landlord submitted, the *Residential Tenancy Policy Guideline 2B* provides for concessions where a required permit cannot be issued because other conditions must first be met.

I find the Landlord has provided sufficient evidence in the form of the *Demolition Permit Policy*, and the very-recently-updated June 24, 2022 list to show the necessary conditions that must be met before issuance of a permit.

I also find the Landlord has established that vacancy is required before certain of the listed conditions can be met. Though the Landlord cited the severing of basic utilities as essentially making the rental unit unlivable anyway, I find the effect thereof is not reason in and of itself. Nevertheless, the Landlord should not be accused of denying basic utilities and services while a tenancy still exists, and I find this is in line with the Landlord's good faith intention to demolish the rental unit.

I find the abundance of evidence shows the Landlord's efforts to ensure that necessary conditions are met before the issuance of the necessary permit. The Landlord provided evidence of the expense to them throughout, and I agree with their statements that this shows a clear picture of their honest intention to demolish the rental unit. The Tenant stated their feeling of receiving mixed messaging from the Landlord; however, I find the messaging from the Landlord since the start of this tenancy has not shifted from their original stated intent to demolish. I find there is no question on the Landlord's good faith in ending this tenancy in the legally sanctioned manner permitted under the *Act*.

I find the Tenant has not provided sufficient evidence to show the Landlord is missing key steps. The evidence of the Landlord showing necessary conditions, as a *policy*, outweighs the Tenant's evidence in this matter. To be clear, the tenancy is not ending for the sole reason of the Landlord wanting to carry out a test for asbestos; nor is the eviction premised on the Landlord's assumption that asbestos is present and forces vacancy.

In conclusion, I find the Landlord has overcome the burden to establish that they issued the Four-Month Notice in good faith. There is no underlying motive or other purpose involved. Further, I find the Landlord has overcome the burden to establish that conditions must be met prior to the issuance of the permit. I dismiss the Tenant's Application for cancellation of the

Four-Month Notice, as well as their plea for the Landlord's compliance with the *Act.* Because they were not successful in their Application, I dismiss their claim for the filing fee.

This Four-Month Notice issued by the Landlord on February 24, 2022 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*.

By this provision, I find the Landlord here is entitled to an Order of Possession. The tenancy shall end on the date specified in the Four-Month Notice, on July 31, 2022.

Conclusion

Under s. 55(1) of the *Act*, I grant an Order of Possession effective **July 31, 2022.** Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 20, 2022

Residential Tenancy Branch