Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Austeville Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M FFT

Introduction

The tenant disputes a *Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit* (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* ("Act"). In addition, the tenant seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

Attending the dispute resolution hearing were the tenant, his advocate, and two representatives of the corporate landlord. The parties were affirmed, and no service issues were raised by the parties.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The facts of this dispute are almost entirely undisputed. Indeed, the only matter of dispute is whether the purpose for issuing the Notice is consistent with the Act. I will explain this in greater detail.

On March 25, 2022 the landlord served the Notice on the tenant. A copy of the Notice was submitted into evidence. The Notice states that, as indicated on page two, the tenancy is being ended in order to "Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property."

There is fundamentally no dispute that the landlord intends to place one of its caretakers into the rental unit to take care of the landlord's many adjacent multi-rental unit properties. It is worth noting that the rental unit in question is a single-family residential home in the South Granville neighbourhood of Vancouver—it is surrounded by high-rises and is in fact located right next-door to the landlord's corporate offices.

What is in dispute, as articulated by the tenant's advocate, is that the meaning of the Act is such that the caretaker who will occupy the rental unit is to look after *that* rental unit or property. The advocate argued that the purpose is thus not for the intended caretaker to look after *other* property.

Additionally, the advocate argued (though rather implicitly) that perhaps the landlord's intentions in ending the tenancy are because "it's always about money," that the land around the rental unit is zoned for high-density, and that—again by implication—the landlord might want to develop the property. In rebuttal, the landlord argued that their caretaker would be placed into the property to keep better care of the adjacent properties. He further explained that "if this was about money" then the landlord could have taken steps to end the tenancy many years ago when it acquired the property. At the end of the day, he submitted that having a caretaker in the rental unit "really is about looking after the landlord's interests."

As an aside, while both parties referenced a previous agreement between the parties wherein, they agreed in writing, that the landlord could end the tenancy pursuant to a 12-month's notification, I will not address that agreement in this decision. The narrow legal issue before me is whether the Notice is to be upheld or cancelled.

Analysis

The Notice was issued pursuant to subsection 49(6)(e) of the Act, which 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, to do any of the following: [. . .] convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

There is no dispute that landlord does not require any permits or approvals required by law. Nor is there any evidence before me to find that the landlord does not intend in good faith to do what it states it intends to do in the Notice.

What is in dispute is whether the phrase “for use by a caretaker, manager or superintendent of the residential property” means that the intended caretaker must only be taking care of the rental unit in which he, she, or they may use. This is the interpretation that the tenant favours—that is, the caretaker put in the rental unit cannot then take care of other rental units or residential property. It is the landlord’s position that the caretaker can very well look after adjacent and nearby residential property.

Neither party provided any caselaw on which this specific subsection of the Act might be interpreted, nor did my own research result in anything of use. And nothing in the Residential Tenancy Branch’s policy guidelines provided guidance. It is therefore necessary for me to engage in statutory interpretation to understand the meaning of the words in subsection 49(6)(e).

Since the Supreme Court of Canada’s decision in *Re Rizzo & Rizzo Shoes Ltd*., 1998 1 SCR 27, courts have noted that noted three factors when approaching statutory interpretation: (1) the language or text of the provision; (2) the context in which the language is used; and (3) the purpose of the legislation in which the language is found. These factors were described in *Woods (Re),* 2021 ONCA 190 at paragraphs 37-41:

> [37] [...] In Canada, it is trite law that the modern approach to statutory interpretation requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Bell ExpressVu Ltd. Partnership v. Rex,* 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26.
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> [38] The starting point is to determine the ordinary meaning of the text. The ordinary meaning refers to “the understanding that spontaneously comes to mind when words are read in their immediate context” and is “the natural meaning which appears when the provision is simply read through”: *R. v. Wookey,* 2016 ONCA 611, 531 O.A.C. 13, at para. 25; *Pharmascience Inc. v. Binet,* 2006 SCC 48, [2006] 2 S.C.R. 513, at para. 30; and *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.,* 1993 CanLII 31 (SCC), [1993] 3 S.C.R. 724, at p. 735.
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> [39] After establishing an initial impression, the court must consider and draw inferences from the Act as a whole. This includes related provisions and the overall scheme. It is presumed that the legislature is competent and well informed, that it uses language consistently, and that the provisions in the Act

> collectively form a coherent scheme: Ruth Sullivan, *Sullivan and Dreidger on the Construction of Statutes,* 4th ed. (Markham: Butterworths, 2002), at pp. 162-63 and 186-87; *Ordon Estate v. Grail,* 1998 CanLII 771 (SCC), [1998] 3 S.C.R. 437, at para. 60.
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> [40] There is also a presumption against tautology: *R. v. Gallone,* 2019 ONCA 663, 147 O.R. (3d) 225, at para. 31. That presumption instructs "that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: LexisNexis, 2014), ("Sullivan"), at p. 211, citing *Attorney General of Quebec v. Carrières Ste-Thérèse Ltée,* 1985 CanLII 35 (SCC), [1985] 1 S.C.R. 831, at p. 838. Instead, "[e]very word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose": Sullivan, at p. 211.
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> [41] Finally, a court must situate its interpretation within the purpose of the legislation. Insofar as the language of the text permits, courts should adopt interpretations that are consistent with the legislative purpose and avoid interpretations that defeat or undermine that purpose. It is presumed that the legislature does not intend absurd consequences: *Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 27.

Before engaging in this analysis, it is worth noting that "rental unit" and "residential property" are defined in section 1 of the Act as follows:

> "rental unit" means living accommodation rented or intended to be rented to a tenant;
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> and
>
> "residential property" means
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> (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
> (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
> (c) the rental unit and common areas, and
> (d) any other structure located on the parcel or parcels;

At the start, an ordinary meaning of the text is such that the intended caretaker is to use the rental unit for purposes of carrying out caretaker duties. What is notable is that the verb “use” is used in this section, versus the more frequently used verb “occupy.” This strongly suggests that the caretaker has duties extending beyond simply residing in the rental unit while they are employed as a caretaker. It therefore means that a caretaker will be taking care of property beyond just that of the rental unit.

This interpretation—that the caretaker will be carrying out the caretaking duties assigned to them by the employer landlord—is consistent with other provisions of the Act, such as section 48 of the Act, which speaks to ending a caretaker’s tenancy along with termination of their employment.

Finally, it is a requirement that the purpose of the Act be considered. An interpretation that permits a caretaker to use the rental unit while simultaneously, or only, looking after other residential properties of the landlord (such as a nearby 97-unit residential property) is not, I find, inconsistent with the purpose of the Act. The high-level purpose of the Act is to establish a legal framework for governing the contractual relationship between landlords and tenants. However, it must also be remembered that the nature of the Act is “predominantly to protect tenants” (see *Cyrenne v. YWCA Metro Vancouver,* 2021 BCSC 2406, at para. 17). This is a reiteration of the court’s earlier finding in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 25, at para. 11, wherein the court found that

> [. . .] the *Act* is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the *Act*, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group: See *(Canada Attorney General) v. Abrahams*, 1983 CanLII 17 (SCC), [1983] 1 S.C.R. 2 [. . .]

Permitting a landlord to end a tenancy of a non-caretaker tenant so that the rental unit may be used by a caretaker to look after residential property of that landlord is not, I must conclude, inconsistent with the protective purpose of the Act. Indeed, of all of the reasons for ending a tenancy that are contained within 49(6) (for example, demolishing the rental unit, or converting the rental unit to non-residential use), subsection 49(6)(e) is arguably the least intrusive upon tenants’ rights. This section balances the right of a landlord to employ the services of a caretaker—who in turn provides direct and indirect benefits to the landlord’s many other tenants—with that of a tenant.

And it must be noted that a tenant who faces displacement under this section is provided a minimum of four months' notice (section 49(2)(b)), the most substantial notice afforded under the Act for all but annual rent increases. Thus, while the Act permits a landlord to exercise a right to have a caretaker use the rental unit, it recognizes that a tenant ought to have sufficient notice that their tenancy is ending. If there is ambiguity in interpreting subsection 49(6)(e), resolving that ambiguity to allow a caretaker to use a rental unit whilst taking care of not only the rental unit in question but other residential property is, I must conclude, an interpretation that favours tenants. Conversely, such an interpretation does not intrude on the protective purpose of the Act.

Taking into careful consideration all of the oral and documentary evidence before me, it is therefore my finding that the landlord has proven the reason for ending the tenancy, and that the intended purpose of converting the rental unit for use by a caretaker, even for a caretaker who will also be looking after other residential property, is satisfied under section 49(6)(e) of the Act.

For these reasons I respectfully dismiss the tenant's application to cancel the Notice. The Notice, which I find complies with section 52 of the Act in form and content, is therefore upheld. Pursuant to section 55 of the Act the landlord is granted an order of possession. A copy of the order of possession is issued in conjunction with this Decision, to the landlord.

Given the circumstances of this dispute, including that of the tenant's recent passing of his mother, and considering the rather cordial relationship between the parties, the order of possession will have an effective date of September 15, 2022. (Certainly, the parties may agree to an earlier or later vacancy date if they are so inclined; I see no reason why this tenancy cannot come to a mutually satisfactory conclusion.)

The tenant's claim to recover the cost of the Residential Tenancy Branch application filing fee, under section 72 of the Act, is dismissed without leave to reapply.

Conclusion

The tenant's application is hereby dismissed, without leave to reapply.

The landlord is hereby granted an order of possession, a copy of which is issued in conjunction with this decision, to the landlord.

This decision is final and binding and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 17, 2022

Residential Tenancy Branch