# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL-4M, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the Notice) pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on April 04 and adjourned to July 22, 2022. This decision should be read in conjunction with the Interim Decision arising out of the April 04, 2022 hearing (the interim decision).

On July 12, 2022 the tenant and the landlord attended the hearing. The landlord was assisted by articling students CF and LK and lawyer RK. Witnesses for the landlord MF and WB also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

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.

Preliminary Issue – Opportunity to be heard

The interim decision states:

> Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that at any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.
> **The tenant affirmed she would like to have an advocate to assist her to present further evidence.**
> After 76 minutes of hearing time, I adjourned the hearing due to time constraints. The hearing will be reconvened at a future date.
> **Both parties are allowed to have advocates assisting them.**
> Conclusion
> Based on the above:
> • I order this hearing will be reconvened in accordance with the notice of hearing document attached to this decision;
> • I order that this is not an opportunity for either party to amend this application for dispute resolution;
> • I order that this is not an opportunity for either party to submit an additional application for dispute resolution to be crossed or joined with this application for dispute resolution currently before me;
> • I order that this is not an opportunity for either party to submit additional evidence.
>
> (emphasis added)

During the July 22, 2022 hearing the tenant affirmed she could not find an advocate. The tenant stated she has difficulties to present testimony and to think. The tenant asked to play a recording with her submissions. I authorized the tenant to do so. I spoke slowly to better allow the tenant to understand the questions.

The tenant was able to make oral submissions several times during both hearings.

I find that the tenant was able to understand the submissions, to provide testimony, and to answer questions.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice. I note the two hearings lasted a total of 125 minutes. The landlord's evidence consists of 8 files and the tenant's evidence consists of 28 files.

I emphasize that I carefully considered all the tenant's testimony, but I am only reproducing here the relevant details.

Both parties agreed the tenancy started on March 15, 2018. Monthly rent is $500.00, due on the first day of the month. The landlord collected and currently holds in trust a security deposit in the amount of $250.00. The tenancy agreement and appendix were submitted into evidence.

The tenant confirmed receipt of the Notice on December 11, 2021. The tenant submitted this application on January 04, 2022 and continues to occupy the rental unit.

The landlord submitted the Notice into evidence. It is dated December 03, 2021 and the effective date is April 30, 2022. The reason to end the tenancy is to convert the rental unit to a non-residential use. The Notice indicates that no permits and approvals are required by law to convert the rental unit.

The details of the cause are:

> I intend to use the cottage as my art studio and hobby area and want to have the washroom available for my own use when working in the workshop.

> I intend to spend a lot of time on the property over all four seasons, determining the best place to build a retirement home, taking the light and weather into consideration. It will also involve digging up some areas of the septic field at some point to see where a building envelope might exist.
>
> No permits or approvals are required to do the above work. Once the design work is done and I am ready to build, I will obtain all necessary permits and approvals.

The landlord served a letter attached with the Notice. The December 03, 2022 letter states:

> I had always anticipated having an art studio/hobby space. The time has come for me to realize that part of my dream and enjoy the property I worked so hard to acquire. I intend to convert the rental unit to a non-residential use for an art studio/hobby space in the spring.
> As I advised you in my email from April 9, 2020, I also want to spend a lot of time there, day and night, and through all four seasons, so that I can determine the best location for, and design a plan for my retirement home. This will also necessitate digging up a lot of the yard to determine exactly where the septic field is so that I will know the available space for the footprint of the home. Over the next year or so I anticipate having some excavation work done, to start to create the final landscaping picture, add a water line etc.
> For the above reasons I am giving you a four month notice to vacate the property with the tenancy ending April 30, 2022. […]
> I have been waiting until fall to give this notice as I know it is very difficult to find rental accommodation during the summer months when there are so many temporary summer jobs on the island.

The landlord testified the rental unit is a cabin in a lot. The landlord lives approximately 18 kilometres from the rental unit and will continue to live in her current house.

The landlord will use the rental unit as a private art studio 4 to 5 days per week for painting and doing crafts for 5 to 7 years. The landlord does not need to have permits to convert the rental unit to an art studio, as she will not have employees.

In the future, the landlord will demolish the rental unit and build her retirement home. The landlord will sleep 10 to 15 nights per year in the rental unit, as this will help her to better plan her retirement house. The landlord will dig and expose the septic field in order to design her retirement home.

The landlord said she had some arguments with the tenant since the start of the tenancy regarding the lawn mowing, pruning the trees, inspections of the rental unit, landscaping, and privacy. The landlord affirmed the Notice is not related to the arguments with the tenant.

The landlord currently has been painting and doing crafts in the dining room table and she would like to spend more time painting and doing crafts. The landlord will have enough space in her rental unit to do paintings and crafts.

The tenant affirmed the landlord did not mention that she planned to have an art studio in the rental unit prior to serving the Notice.

The landlord emailed the tenant on April 09, 2020:

> First re landscaping - Once a branch is cut, it can never be replaced, so I don't want someone else making those decisions for me. **I intend to use the cottage for my own personal use sometime in the future so that I can stay there some of the time to see what the lighting is like throughout the year etc., and design a small rancher for the property to be my retirement home.**
> **Because of the location of the septic tank and field, the home will have to fit a very specific, and somewhat small envelope.** But because it will likely be my future home, I have particular ideas about what I want to do with the foliage already there.
>
> (emphasis added)

The landlord submitted into evidence two complaints submitted by the tenant to the British Columbia Human Rights Tribunal (the BCHRT) against the landlord and WB. The tenant submitted the first BCHRT complaint on May 01, 2020 and listed 16 incidents with the landlord from March 13, 2018 to April 16, 2020.

The tenant submitted the second BCHRT complaint on February 19, 2021 and listed 3 incidents with the landlord and WB from July 07, 2020 to Sep 21, 2020 and 10 incidents with WB from June 19, 2020 to January 02, 2021.

The BCHRT complaints list issues between the landlord, the tenant and WB about pruning trees, grass mowing, privacy, landscaping, vehicle parking in the rental unit’s driveway and noise (the issues).

The landlord stated she submitted the two BCHRT complaints into evidence for transparency, as they are not related to the Notice. The landlord learned that the tenant submitted the first BCHRT complaint in June 2020. The landlord submitted responses and asked the BCHRT complaints to be dismissed. The BCHRT has not issued a decision regarding the two complaints.

The tenant testified she had issues with the landlord and WB about landscaping, grass mowing, the landlord entering the rental unit without providing prior notice and accessing the rental unit's garage.

The tenant submitted into evidence 25 photographs dated from April 27, 2018 to February 25, 2022. The photographs show the rental unit's yard, the kitchen and the landlord inspecting the rental unit.

The tenant provided written submissions with details about the issues, including incidents related to a dehumidifier (October 01, 2018), Christmas baking (December 23, 2018), shovelling a path (February 15, 2019) and serving the notice of rent increase (January 27, 2020). The tenant submitted into evidence emails between the parties from October 09, 2018 to April 16, 2020 regarding the issues.

The landlord emphasized she had a troublesome relationship with the tenant, but the Notice is unrelated to the issues between the parties.

The tenant said the landlord served the Notice in bad faith as retaliation because of the issues between the parties.

The tenant submitted text messages about parking on June 18, 2021 and landscaping on December 01, 2021:

> [landlord] I have been asked to help with decorating/entertainment for the old age pensioners luncheon on December 21, 2021. I would like to have some holly to decorate with and to five them. Would you be ok with me outing some from my holly tree sometime between December 18th and 20th? […]
> [tenant] Just give me a proper 24-hour notice with date and time. Thank you.

The landlord affirmed the December 01, 2021 landscaping incident is not related to the Notice.

Witness MF, a friend of the landlord, stated the landlord plans to use the rental unit as an art studio and in the future she wants to build her retirement house on the property. The landlord will continue to live in her current house and may also have some overnight family guests in the rental unit for a few nights per year. The landlord did not serve the Notice in retaliation because of the issues between the landlord, the tenant and WB.

The landlord testified that after she builds her retirement house, she will continue to use the rental unit as her art studio. The landlord said that her niece and great nephews may be her overnight guests in the rental unit for a few nights after a few years, as they are not living close to the landlord anymore.

Witness WB, partner of the landlord, affirmed that the landlord plans to use the rental unit as an art studio for 10 to 20 years and that she will continue to live in her current house. The landlord did not serve the Notice in retaliation because of the issues between the landlord, the tenant and WB.

I asked the tenant twice if she had any questions to the witnesses and the tenant did not have questions.

The tenant stated the landlord created conflicts during the tenancy, ambushed and harassed the tenant.

The landlord testified that all the issues between the parties are not related to the Notice.

CF said the issues are not related to the Notice, the landlord acted in good faith and will use the rental unit as indicated on the Notice.

Analysis

Section 49(8)(b) allows the tenant to dispute the Notice within 30 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on December 11, 2021 and submitted this application on January 04, 2022, I find the tenant dispute the Notice within the timeframe of section 49(8)(b) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid.

Section 49(6) of the Act states:

> 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;
> (b)[Repealed 2021-1-13.]
> (c)convert the residential property to strata lots under the Strata Property Act;
> (d)convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
> (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
> (f)convert the rental unit to a non-residential use.

Residential Tenancy Branch Policy Guideline 2B provides:

> GOOD FAITH
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.
> […]
> Non-residential use means something other than use as living accommodation. However, sometimes use as a living accommodation is secondary, incidental or consequential to a non-residential use. For example, correctional institutions are facilities that incarcerate persons convicted of criminal offences – a non-residential use – but they also provide living accommodation to incarcerated persons. Similarly, community care facilities provide 24-hour institutional care to persons and, in doing so, must also provide living accommodation to those persons. These facilities are considered non-residential even though they provide living accommodation because this use is consequential to their primary institutional use.
> Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office. Some live/work spaces may also be considered non-residential if the majority of the unit must be devoted to commercial enterprise based on municipal requirements: Gardiner v. 857 Beatty Street Project, 2008 BCCA 82.
> Holding the rental unit in vacant possession is the absence of any use at all. A landlord

> cannot end a tenancy for non-residential use to leave the rental unit vacant and unused.

In Gallupe v. Birch, 1998 CanLII 1339, the British Columbia Supreme Court states:

> [35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

The Notice and the December 03, 2022 letter state the landlord plans to use the rental unit as a private art studio.

I find the testimony offered by the landlord and witnesses MF and WB was credible and convincing. I find the landlord sufficiently explained her plans to use the rental unit as a private art studio.

Based on the April 09, 2020 email, I find the landlord informed the tenant on April 09, 2020 that she intended to use the rental unit for her personal use.

I accept the landlord’s undisputed and convincing testimony that she does not need permits to use the unit as a private art studio.

The landlord explained that there were disputes with the tenant regarding the issues and submitted copies of the BCHRT complaints. The issues happened throughout the tenancy and the landlord only served the Notice after 3 years and 9 months.

Based on the credible and convincing testimony offered by the landlord and witnesses MF and WB, I find the landlord did not serve the Notice because of the issues and acted in good faith.

Considering all of the above, I find the landlord has met the onus to prove, on a balance of probabilities, that she will convert the rental unit for a non-residential use. I dismiss the tenant’s application.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and it is in the approved form.

Pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that she may be liable for any costs the landlord incurs to enforce the order of possession.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 09, 2022

Residential Tenancy Branch