Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Four Month Notice to End Tenancy for Demolition (the "Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the tenant's agent and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Service

Both parties agree that the tenant personally served the landlord with the tenant's application for dispute resolution and evidence but neither party could recall the exact

date. I find that the landlord was served with the above documents in accordance with section 88 and 89 of the *Act.*

Both parties agree that the landlord personally served the tenant with the landlord's evidence approximately 10 days before this hearing. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began sometime in the year 2000 and is currently ongoing. Monthly rent in the amount of $250.00 is payable on the first day of each month.

Both parties agree that the landlord personally served the tenant with the Notice on April 30, 2022. The Notice was entered into evidence, is signed by the landlord, is dated April 30, 2022, gives the address of the rental unit, states that the effect date of the notice is August 31, 2022, is in the approved form, #RTB-29, and states the following ground for ending the tenancy:

> I am ending your tenancy because I am going to Demolish the rental unit. I have obtained all permits and approvals required by law to do this work.

The landlord testified that she served the tenant with the Notice for three reasons:

1. the septic system at the subject rental property has failed and needs to be replaced and the landlord does not have the funds to install a new septic system;
2. the landlord is in her 70s and no longer wants to be a landlord; and

3. due to the failed septic system, the landlord's insurance has been cancelled and will not be reinstalled until the cabin is demolished or a new septic system is installed.

The landlord entered into evidence a signed demolition permit for the subject rental property that was issued on September 2, 2021. The landlord entered into evidence an email from the regional district who issued the permit which states that the permit is valid for two years.

The landlord entered into evidence an Order from the local Health Authority dated October 5, 2020 which orders the landlord, in part, to cease and desist the discharge of sewage onto the ground and to complete construction of a sewerage system which complies with the Regulation.

The landlord entered into evidence a notice of cancellation of insurance from the landlord's insurer.

The tenant testified that he was under the impression that he would be permitted to live at the subject rental property until he died. The tenant testified that this impression was given by the landlord, who is the mother of his daughter, and from his daughter. This was disputed by the landlord. The tenant testified that without him, the subject rental property would have rotten away and would not exist.

The tenant testified that according to the Health Authority the septic system needs rebuilding. The tenant testified that he is still using the septic system and that it is working.

The tenant testified that he got the impression from the landlord that she was not going to tear down the subject rental property because she said as much. This was disputed by the landlord. The tenant testified that it would cost the landlord as much to demolish as to install a new septic system. This was disputed by the landlord.

The landlord testified that she plans on demolishing the subject rental property and does not recall ever saying otherwise. The landlord testified that it will cost $10,000.00 to $15,000.00 to install a new septic system and that demolition would cost less because her son in law works in that field and will help with the demolition. The landlord testified that the cost of installing a new septic system is out of her means.

The tenant's agent testified that the landlord or tenant could pay for a pump truck to empty the septic system when necessary which costs less that demolishing the subject rental property or installing a new septic system.

Analysis

Section 49(6)(a) of the *Act* states:

> (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;

Residential Tenancy Branch Policy Guideline #2B states:

> When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.
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> ….
>
> The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made.
>
> ….
>
> The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change.
>
> ….
>
> 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 (section32(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.

Upon review of the permit and the emails with the Regional District regarding said permit, I find that the permit is a valid permit for demolition which the landlord obtained before the Notice was served on the tenant. I find that the permit for demolition covers the extent and nature of work (demolition) to be completed.

In this hearing the tenant raised an issue of dishonest motive in ending this tenancy, namely that the landlord did not intend to demolish the subject rental property and is trying to avoid the landlord's obligation to repair and maintain the subject rental property.

Based on the Order from the Health Authority and the testimony of both parties, I find that the septic system at the subject rental property requires replacement. I accept the landlord's testimony that this replacement would cost a substantial amount of money and that the landlord does not wish to put further funds into maintaining the subject rental property and would rather demolish it.

In accordance with Steeves v. Oak Bay Marina Ltd., 2008 BCSC 1371, I find that the fact that the landlord is seeking to demolish the subject rental property to avoid significant costs does not result in a finding of bad faith. I find that it is reasonable for the landlord, a person in their seventies, to consider her financial future when deciding

what to do with her property. I also find that it is reasonable for the landlord's desire to continue to be a landlord to be factored into the decision of what to do with the subject rental property. I find that the landlord has proved, on a balance of probabilities, that she is acting in good faith and that given the circumstances in which she finds herself (both age and the condition of the septic system) honestly intends on demolishing the subject rental property.

In this hearing the tenant submitted that he believed that he would be permitted to live in the subject rental property for the duration of his life. This was disputed by the landlord. I find that the tenant's above claim, while not labelled by the tenant, amounts to a claim of proprietary estoppel.

A test for proprietary estoppel is found in ***Crabb v. Arun District Council***, [1976] 1 Ch. 179 (C.A.) at page 871:

> Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights – knowing or intending that the other will act on that belief – and he does so act ... this equity does not depend on agreement but on words or conduct.

I find that the tenant's testimony, which was disputed by the landlord, has not proved, on a balance of probabilities, that the words or conduct of the landlord led the tenant to believe that the landlord would not insist on her legal rights. While the tenant may have believed he would live in the subject rental property for the rest of his life, I find that the tenant has not proved that this mistaken belief came about by the words or conduct of the landlord. Pursuant to my above finding, and in accordance with the case law set out above, I find that proprietary estoppel has not been made out.

As I have determined that the landlord has the necessary permits and approvals required by law and intends in good faith to demolish the subject rental property, I uphold the Notice and dismiss the tenant's application to cancel the Notice.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

> (a)the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #29.

Pursuant to section 55 of the *Act,* I find that since the Notice complies with section 52 of the *Act*, the Notice was upheld and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to an Order of Possession effective October 31, 2022.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

Pursuant to section 55 of the *Act,* I grant an Order of Possession to the landlord effective at **1:00 p.m. on October 31, 2022,** which should be served on the tenant. 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: October 06, 2022

Residential Tenancy Branch