



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIVE DESIGN AND BUILDING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the *Residential Tenancy Act* (the Act) on September 8, 2022, seeking:

- Cancellation of a Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (Four Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on January 26, 2023, and was attended by the Tenant J.T., who provided affirmed testimony. J.T. stated that they are also acting on behalf of the other applicant/tenant J.K., who was unable to attend. Although the line remained open for the 20-minute duration of the hearing, no one attended on behalf of the Landlord. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Tenant was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As no one appeared at the hearing on behalf of the Landlord, I confirmed service of these documents as explained below.

The Tenant stated that they only ever had a verbal tenancy agreement with the current Landlord, as the property was sold during their existing tenancy (approximately four years ago), and therefore they do not have a tenancy agreement listing an address for service for the current Landlord. The Tenant stated that they have been paying rent to the name of the Landlord listed in the Four Month Notice (a corporation) via cheque for the last four years, and that the only contact they have for the Landlord is the agent named in the Application Y.Z., who goes by the name "Scott". The Tenant stated that they only have a phone number for Y.Z. and that Y.Z. would come to collect the rent cheques in the name of the corporation. The Tenant stated that as the Four Month Notice does not list an address for service for the Landlord, and they do not have any contact information for the Landlord other than Y.Z.'s phone number, they had to google the business named as the Landlord in the Four Month Notice. The Tenant stated that they used the address listed online, which is a show home for the proposed development the Landlord wants to demolish the rental unit to build, to serve the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application and the Notice of Hearing, along with the documentary evidence before me.

The Tenant stated that they sent the above noted documents via FedEx with a tracking number and signature requirement. The Tenant stated that they sent the package on September 24, 2022, and that it was ultimately returned to sender after which time they delivered a new identical package to the same address, and placed it in the mailbox on December 13, 2022. The Tenant provided a copy of the registered mail receipt and tracking number and with their consent, I tracked the package online. The online tracking shows that the registered mail was sent on September 24, 2022, as stated by the Tenant, that attempts to deliver it were made on September 28th, September 29th, September 30th, and October 1st, all of which were unsuccessful due to "customer not available or business closed". The Tracking information shows that the package was available for pick-up by the Landlord as of October 3, 2022, following the above noted unsuccessful delivery attempts, and that it was ultimately returned to sender on October 24, 2022, as it was not picked-up.

I accept that the address used by the Tenants for service of the NODRP and documentary evidence by mail on September 24, 2022, and by placing a copy in the

mailbox on December 13, 2022, meets the definition of an address for service for the Landlord under sections 88(c) and 89(1)(c) of the Act. Further to this, I am satisfied that the Landlord was attempting to avoid service by failing to provide the Tenants with an address for service when they purchased the property, failing to put the Landlord's address for service on the Four Month Notice as required, and failing to either accept or retrieve the mail sent by FedEx. I therefore deem the Landlord served on September 29, 2022, pursuant to section 90(a) of the Act. I also deem the Landlord subsequently re-served on December 16, 2022, pursuant to section 90(d) of the Act.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Tenants by email, as per their request, on September 21, 2022. As I am satisfied by the Tenant that the NODRP, and the documentary evidence before me from the Tenants, was sent by registered mail (or through an equivalent method) to the Landlord on September 24, 2021, I therefore find that the Tenants complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Tenant had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that I find was served in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, a copy of the decision will be sent to them by email at the email address listed for them in the Application.

Preliminary Matters

In their Application the Tenants named only the agent for the Landlord. However, it is clear from the Tenant's testimony and the Four Month Notice that the Landlord is a

corporation. I have therefore amended the Application to also properly name the Landlord, not just their agent Y.Z.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the Four Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Are the Tenants entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The Tenant stated that the Four Month Notice was received by them on August 7, 2022, the day before they filed their Application seeking its cancellation.

The Four Month Notice in the documentary evidence before me appears to be signed and dated by Y.Z. July 11, 2022, and has an effective date of October 12, 2022. Although the top left-hand corner of page two is cut off in the document uploaded for my consideration by the Tenants, and therefore I am unable to see if the first ground for ending the tenancy was selected, which is to "Demolish the rental unit", none of the remaining four grounds were selected. The box stating "No permits and approvals are required by law to do this work" was selected and under the Planned Work section it states "redevelop the land for multifamily". Under the Details of Work section it states "Demolition of existing homes".

The Tenant disputed the validity of the grounds given in the Four Month Notice stating that the Landlord does not have a demolition permit and has not even applied for one. The Tenant submitted an email chain between them and the municipality wherein the municipality states that a permit would be required to demolish the property and that as of the date of the email, September 9, 2022, no demolition permit application has been received by the municipality for the rental unit address.

No one appeared at the hearing on behalf of the Landlord to present any evidence or testimony for my consideration.

Analysis

Based on the uncontested and affirmed testimony before me, I am satisfied that a tenancy to which the Act applies exists between the parties, and that the Tenants disputed the Four Month Notice within the statutory time period set out under section 49(8) of the Act.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove the validity of a notice to end tenancy disputed by a tenant falls to the landlord.

As no one appeared at the hearing on behalf of the Landlord to provide any evidence in support of the Four Month Notice, despite my findings that the Landlord and/or their agent Y.Z. was deemed sufficiently served with the NODRP and the documentary evidence before me on both September 29, 2022, and December 16, 2022. I therefore find that the Landlord has failed to discharge the burden of proof incumbent upon them to establish on a balance of probabilities that they have cause to end the tenancy under section 49 of the Act. Further to this, the Tenants submitted compelling documentary evidence from the planning department of the municipality in which the rental unit is located, stating that a permit would be required for demolition and that no permit had been issued or applied for regarding the rental unit address as of September 9, 2022, which is well after the date the Four Month Notice was created and served. As a result, I grant the Tenants' Application seeking its cancellation and I order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the Act.

As the Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of \$100.00 and I Order the Landlord or their agents to pay this amount to the Tenants. In the alternative, the Tenants are permitted pursuant to section 72(2)(a) of the Act to deduct \$100.00 from the next months rent payable under the tenancy agreement, should they wish to do so in lieu of enforcing the Monetary Order.

Conclusion

The Tenant's Application is granted. I therefore order that the Four Month Notice dated July 11, 2022, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the Act.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$100.00**. The Tenants are provided with this Order in the above terms and the Landlord, or their agents must be served with this Order as soon as possible. Should the Landlord or their agents fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. Pursuant to section 72(2)(a), I authorize the Tenants to deduct \$100.00 from the next months rent payable under the tenancy agreement in lieu of enforcing the Monetary Order in court, should they wish to do so.

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

Dated: January 26, 2023

Residential Tenancy Branch