



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C K T HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with an Advocate and a support person. An agent for the landlord also attended with Legal Counsel, and the landlord's spouse, who did not take part in the hearing.

The parties each gave affirmed testimony and Legal Counsel and the tenant's Advocate were given the opportunity to question the parties and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit was given in accordance with the *Residential Tenancy Act*, and in good faith?

Background and Evidence

The landlord's agent has provided a Statutory Declaration, and testified that this month-to-month tenancy began in 2002, prior to the landlord purchasing the property in 2016, and the tenant still resides in the rental unit. A copy of the tenancy agreement

has not been provided for this hearing, however rent in the amount of \$811.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit in the amount of \$292.50 which is held in trust by the current landlord, and no pet damage deposit was paid. The rental unit is one of 14 units in an apartment building. The landlord does not reside on the rental property.

The rental building is about 60 years old with 3 units in the front and 4 in the back, which also has underground parking, due to the grade. The landlord wishes to convert the rental unit to a caretaker suite. It is north-west facing, and faces a school at the front of the building. It is a corner unit with a wrap-around balcony. Photographs have been provided for this hearing. The rental unit is above the laundry room, and a corridor between the rental building and another building sometimes have people hiding from the rain, smoking, drifters, homeless people collecting bottles and drug paraphernalia left behind. The caretaker will have views of the front of the building and side area from the wrap-around balcony.

The building is currently managed by the landlord's agent, who owns 4 other buildings with a total of 39 units. The landlord has never had a caretaker at the rental building and does all the cleaning, rent collection and snow removal. The landlord's agent is aged 66 and wants to relieve himself from the daily duties of managing the apartment building and late night calls. It's been hard to keep up, since the landlord's agent has had multiple injuries over the years and has problems with his knees. Previous injuries have affected the ability to manage the units,, and the landlord wishes to retire.

The landlord has arranged a caretaker and has provided a copy of a written agreement between the landlord and a new caretaker, who is prepared to take on that role.

The landlord served the tenant with a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit on August 31, 2022 by sliding it under the door of the rental unit. The landlord's agent corrected his testimony during cross-examination indicating that it was served on September 26, 2022. There were no vacancies at that time, except one on the 3rd floor, which had become vacant just before or just after the Notice was served; the landlord is not certain when. However, its balcony was in poor condition and the landlord completed a full renovation. Photographs have been provided for this hearing. The bathroom had some rot and tiles were removed; and it smelled of mould. The cost to complete the repairs and renovations was over \$20,000.00 including the balcony. It's now the best looking suite in the building, and not suitable for a caretaker, who won't need such a fancy high top

end suite with granite countertops. The tenant who had occupied that unit moved out on July 1, 2022, and renovations started on August 31. It re-rented for current market rent of \$1,850.00 per month. Another unit pays \$644.00 per month, and that is the only other unit that pays less.

The caretaker agreement shows that the caretaker's rent is \$1,600.00 per month and salary is \$1,465.00, so the landlord will collect less than what the tenant is currently paying.

A copy of the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit has been provided for this hearing by the tenant and it is dated September 26, 2022 and contains an effective date of vacancy of February 1, 2023. The reason for issuing it states: Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The tenant testified that the occupant in unit 304 spoke to the tenant on the evening of December 26, 2022 who said that he just moved in on November 1, 2022. The tenant spoke to that occupant again on February 25, 2023.

The tenant had texted the landlord that unit 305 was vacant and had been for awhile. The landlord responded that the caretaker will have less stairs to walk up and will be able to keep an eye on the front door and laundry from the tenant's unit.

Originally, unit 101 was the manager's suite which is next to the laundry room, tool room and electrical room. The tenant suggested that suite to the landlord, but the landlord didn't respond. On October 6, 2022 the tenant also texted the landlord indicating that the tenant was willing to move into an empty suite upstairs, but the landlord didn't respond.

SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

There are financial implications to the landlord by evicting; the landlord won't get \$811.00 per month, but \$1,600.00 rent payable by the caretaker, who will also receive a salary of \$1,465.00, which is the minimum required by law. That will result in \$135.00 per month revenue, compared to the \$811.00 per month the landlord now gets. The difference to the landlord is that he won't have to do all the day-to-day duties, so will benefit, but not financially.

In any situation of a rising market in rent, a landlord will always be criticized for an increase in rent, which is not fair to a landlord. In this case, it is not bad faith but a fact of the local economy.

The communications between the tenant and the landlord are not relevant; a tenant cannot dictate which unit the landlord must convert. This rental unit is preferable for the reasons the landlord cited, and there is no evidence of bad faith.

The landlord would be content with an order of possession effective April 30, 2023.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The onus is on the landlord to prove good faith; that the landlord is not trying to defraud and has no ulterior purpose. The landlord made it clear in testimony that he could get \$1,850.00 for that unit, and it's not suitable for a caretaker because the landlord could get \$250.00 more, which was the motive for renting the other unit. Suitable or not, the ulterior motive is \$250.00. The tenant has the 2nd lowest rent, so that's motive. There are 14 units and 6 of them are at the front. The landlord described the desirability of a corner unit, of which half are.

The landlord was inconsistent with dates that the Notice was served and when renovations were done. Perhaps he was confused, or has an ulterior motive. Another unit was available so the landlord had other alternatives. The landlord wants the rental unit, but ulterior motives and inaccurate information in the landlord's Statutory Declaration and inconsistencies in testimony has not proven good faith.

Analysis

The *Residential Tenancy Act* states that a landlord **may** end a tenancy if the landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. I agree with Legal Counsel for the landlord that a landlord may decide which rental unit to convert. In this case, although it is unfortunate that the tenant has resided in the rental unit for about 20 years, the law permits the landlord to do so, and I accept the reasons.

I have reviewed all of the evidentiary material, and although I agree that the landlord may have had other vacancies, the landlord has entered into a caretaker agreement with a caretaker. I also accept the undisputed testimony that the landlord wishes to retire and have a caretaker look after the rental complex. I also accept the submissions of the tenant's Advocate that the onus is on the landlord to establish good faith. The landlord testified that this rental unit is a convenient and suitable suite for the caretaker, and I see no ulterior motive. Therefore, I dismiss the tenant's application.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the

landlord, so long as the Notice given is in the approved form. I have reviewed the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an order of possession in favour of the landlord. The landlord indicated that he would be content with an effective date of vacancy of April 30, 2023, and I so order. The tenant is at liberty to end the tenancy earlier by giving the landlord no less than 10 days written notice, and pay rent to the effective date of the tenant's notice, and is still entitled to compensation in the equivalent of 1 months' rent payable under the tenancy agreement.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective at 1:00 p.m. on April 30, 2023.

This order is final and binding and may be enforced.

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: March 05, 2023

Residential Tenancy Branch