



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenants) A.L. and D.B.	910092108	CNC, CNL-4M
(Landlord) K.L. and B.L.	910097861	OPL-4M, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied:

- to cancel a One Month Notice to End Tenancy for Cause dated November 15, 2022 ("One Month Notice"); and
- to cancel a Four Month Notice to End the Tenancy for Demolition dated December 1, 2022 ("Four Month Notice").

The Landlords applied:

- for an Order of Possession, further to having served the Tenants with the Four Month Notice; and
- recovery of their \$100.00 application filing fee.

The Tenants D.B. and A.L., an agent for the Tenants, L.P. ("Agent"), and the Landlords K.L. and B.L., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenants, T.B., attended, but was not called upon to testify.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral

and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I considered service of the Notices of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The Tenants testified that they served the Landlord with their Notice of Hearing documents in person on November 27, 2022. They said that this included everything that they submitted to the RTB. The Landlords said that the Tenants only responded to the first Four Month Notice dated November 1, 2022, but not the One Month Notice or the Four Month Notice dated December 1, 2022.

The Tenants said they served the Landlord with their amendment to address the second Four Month Notice dated December 1, 2022, by taping an envelope to the Landlords’ door on March 15, 2023. The Landlords said that the Tenants actually tried to serve them by telling the Landlords to attend the rental unit, because there was mail for the Landlords. As it turned out, the Tenants were trying to serve the Landlords this way, which while questionable, is compliant with the Act as service “in person”. However, when the Landlords attended the rental unit for their mail, the Tenants refused to give the Landlords the Notice of Hearing documents and evidence. As a result, I find that the Tenants failed to serve the Landlords with their evidence pursuant to the Act, and therefore, I find that I cannot consider the Tenants’ evidence in this proceeding. However, their testimony in the hearing is evidence before me.

The Landlords testified that they served the Tenants with their Notice of Hearing documents and evidence in person on January 23, 2023. The Landlord provided videos showing the contents of what they served to each Tenant, as well as a video of them handing these packages to the Tenant, A.L., as evidence of service. I find that the Tenants were served with the Notice of Hearing documents in accordance with the Act.

Preliminary and Procedural Matters

The Landlords provided their email address in the Application and they confirmed it in the hearing. The Tenants’ Agent provided her email address for receipt of the Decision in the hearing, and the Tenants said they would like to receive it by mail. The Parties also confirmed their understanding that the Decision would be sent to both Parties in this manner, and any Orders sent to the appropriate Party, as well.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the Four Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a monthly rent of \$1,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$850.00, and no pet damage deposit.

In the hearing, we reviewed the notices to end the tenancy that were issued, and which were submitted to the RTB. The Parties confirmed that the **One Month Notice** was signed and dated November 15, 2022, and that it has the rental unit address. It was served in person, and by attaching it to the rental unit door on November 15, 2022, with an effective vacancy date of December 31, 2022. The One Month Notice was served on the grounds that Tenants are repeatedly late paying rent. Another ground for the One Month Notice was that the Tenants or a person permitted on the property by the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and put the Landlord's property at significant risk.

The **Four Month Notice** was signed and dated December 1, 2022, and it has the rental unit address. It was served by attaching a copy to the rental unit door on December 1, 2022, with an effective vacancy date of March 31, 2023, which is automatically corrected by section 53 of the Act to be April 30, 2023. According to section 90 of the Act, a document given or served by attaching a copy to the door is deemed to be received on the third day after it is left. As such, the Four Month Notice was served to the Tenants on December 4, 2022. Further, section 49 (2) (b) states that the effective vacancy date on a notice to demolish a residential property must be:

- (i) not earlier than 4 months after the date the tenant receives the notice, and
- (ii) the day before the day in the month, . . . that rent is payable under the tenancy agreement.

As a result, the first full month was January through to the end of April 2023. Further, the Four Month Notice was served on the grounds that the unit will be demolished. The Landlord noted the permit numbers he had obtained from the City for this action on the Four Month Notice.

In the hearing, the Landlords said that they have intended all along to demolish the residential property and build another house for themselves. They said they were upfront with the Tenants about this not being a long-term tenancy. The Landlord said: "They kept reiterating a long term tenancy, but we didn't sign a long term lease."

The Landlords said the Tenants had early notice that the Landlords' demolition plans were moving forward, because the Landlords had the house appraised by the bank and they had a survey done of the property while the Tenants lived there in June 2022.

The Landlords said they first served the Tenants with a four month notice to end the tenancy for demolition on November 1, 2022; however, they said at that point they had not obtained their permit numbers. As a result, they served the Tenants with the Four Month Notice on December 1, 2022, which included the Landlords' permit numbers for which they had applied.

The Tenants testified about the bank appraisers and the surveyors, but the Tenants focused on the Landlord having not provided them with 24 hours notice of these visits. I explained that these events were not relevant to the issues before me, and I asked if the Tenants would like to comment on what the Landlords had said.

The Tenants said:

They are supposed to have the permits with it. All the people coming on the property to do all that work. The Landlord must act in good faith. Permits are required by law. The Landlord must follow all these rules and have all the papers with [the Four Month Notice]. There were only the two papers – the Four Month Notice and a letter saying.... So where are the permits?

During the hearing, the Landlords read from a document the provided to the RTB and the Tenants in their evidence. This document addresses the permit issue. It notes that section 49.2 of the Act allows a landlord to apply for an order to end the tenancy and an order of possession, if the landlord has all the necessary permits and approvals required by law. The Act also requires the Landlord to intend in good faith to renovate or repair the rental unit.

The Landlord said that this condition was met, because they applied for a demolition permit from the City and it is "in progress". They said the permits cannot be issued until the rental unit is vacant. Before the demolition permit is issued, the City requires gas, electrical, septic, water, and sewer services to be removed. This cannot be done until the home is vacant. A hazardous material survey also needs to be conducted after the home is vacant, as it is an original home and has asbestos.

The Tenants also said:

As per Residential Tenancy Policy Guideline 2B, "If a required permit cannot be issued because other conditions must first be met", the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB."

The Landlords referred to the following documents they provided:

1. City of Maple Ridge Permit Status
2. Demolition Permit Application Submitted to the City of Maple Ridge

I reviewed these documents and I find them to be consistent with the Landlords' explanation of what is required before a permit is issued.

The Landlords also addressed their requirement to act in good faith in this matter. They said:

The Act requires that the landlord act in good faith. We have a construction mortgage. This mortgage requires us to start the build within 6 months and complete it within 18 months. We are paying interest payments on this mortgage and are obligated by the Bank to demolish the home and construct a new home. In order to meet the 6 month deadline, we will be performing all the requirements as soon as the home is vacant, otherwise we will face penalties from our Bank.

We have every intention of demolishing the home, it will be demolished as soon as the demolition permit is issued. The Residential Tenancy Policy Guideline 2B states that 'If the tenancy is ending under section 49(6)(a), the tenant has no right of first refusal to enter into a new tenancy agreement with the landlord for the rental unit.' The building will be demolished entirely. The tenant does not have a right of first refusal to enter into a new tenancy agreement with us going forward.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 (6) (a) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals by law, and intends in good faith to demolish the rental unit.

I find that the Landlord has applied for all the permits and approvals required by law, and I find that in this case, the required permits cannot be issued until the rental unit is vacant. I find that the Landlords have met their burden of proof in this regard. I dismiss the Tenants' Application wholly without leave to reapply.

I grant the Landlords an Order of Possession pursuant to section 49.2 (d) of the Act. As the corrected effective vacancy date has not passed, the Order of Possession will be **effective on April 30, 2023, at 1:00 p.m.**

As I have ended the tenancy due to the Four Month Notice, I find it unnecessary to consider the validity of the One Month Notice; however, given the result, the One Month Notice is dismissed without leave to reapply.

Given their success in this matter, I also award the Landlords with their **\$100.00** Application filing fee from the Tenants. The Landlords are **authorized to retain \$100.00 from the Tenants' \$850.00 security deposit** in complete satisfaction of this award.

Conclusion

The Tenants are unsuccessful in their Application. The Landlords provided sufficient evidence to meet their burden of proof that the Four Month Notice is valid and enforceable. The **Tenants' Application is dismissed wholly** without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlords an **Order of Possession** effective on the corrected effective vacancy date on the Four Month Notice, which is **April 30, 2023, at 1:00 p.m.** This Order must be served on the Tenants by the Landlords and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords are awarded recovery of their **\$100.00** Application filing fee from the

Tenants. The Landlords are **authorized to retain \$100.00 from the Tenants' \$850.00 security deposit** in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 31, 2023

Residential Tenancy Branch