Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

FINAL DECISION

Dispute Codes CNL-4MN, FFT

Introduction

This hearing dealt with the tenants' application, filed on October 25, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, dated September 29, 2022, effective February 1, 2023 ("4 Month Notice"), pursuant to section 49(6); and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord, the two tenants, "tenant SC" and "tenant DF," and the tenants' lawyer attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The first hearing on March 3, 2023, lasted approximately 70 minutes from 1:30 p.m. to 2:40 p.m. The landlord intended to call 1 witness, "witness DP," who did not attend the first hearing or testify. The tenants intended to call 3 witnesses, "witness MS," "witness KB," and "witness SE." Witness MS and witness KB called in at 1:30 p.m., left the hearing at 1:36 p.m., did not testify at the first hearing, and did not hear evidence or testimony from either party at the first hearing. Witness SE did not attend both hearings or testify.

The second hearing on March 31, 2023, lasted approximately 153 minutes from 9:30 a.m. to 12:03 p.m. The tenants' witness KB called in at 9:30 a.m. and left the hearing at 9:38 a.m., called back in and left at 10:13 a.m., and testified from 11:08 a.m. to 11:28 a.m. The tenants' witness MS called in and left at 10:12 a.m., and testified from 10:42 a.m. to 11:03 a.m. The landlord's witness DP called in and left at 10:46 a.m., and testified from 11:37 a.m. to 12:02 p.m.

At the second hearing, the tenants' lawyer stated that the tenants intended to call witness SE, but he started a new job and was not available. She agreed that the tenants had sufficient notice to arrange for witness SE to attend the second hearing.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, the landlord provided her mailing address and the tenants' lawyer provided her email address, for me to send copies of both decisions to both parties after both hearings.

At both hearings, the landlord said that she owns the rental unit, and she provided the rental unit address.

At both hearings, both tenants confirmed that their lawyer had permission to represent them. At both hearings, they identified their lawyer as the primary speaker for the tenants.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of both hearings, all hearing participants separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, I informed them that I could not provide legal advice to them. At both hearings, they had an opportunity to ask questions, which I answered. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties affirmed that they were ready to proceed with both hearings, they wanted me to make a decision, and they did not want to settle this application. At both hearings, both parties were given multiple opportunities to settle, discussed settlement, and declined to settle.

At both hearings, I repeatedly cautioned the tenants that if I dismissed their application without leave to reapply, I would uphold the landlord's 4 Month Notice, end this tenancy, and issue a two (2) day order of possession against the tenants. At both hearings, the tenants repeatedly affirmed that they were prepared for the above consequences if that was my decision.

At both hearings, I repeatedly cautioned the landlord that if I cancelled the landlord's 4 Month Notice, I would not issue an order of possession against the tenants and this tenancy would continue. At both hearings, the landlord repeatedly affirmed that she was prepared for the above consequences if that was my decision.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on March 3, 2023, was adjourned for a continuation after 70 minutes because it did not finish within the 60-minute hearing time. By way of my interim decision, dated March 6, 2023, I adjourned the tenants' application to an expedited second hearing date of March 31, 2023. During the second hearing, both parties affirmed that the above information was correct.

At the first hearing, I notified both parties that the RTB would send them copies of my interim decision and notice of reconvened hearing with the second hearing date information. At the second hearing, both parties confirmed receipt of my interim decision and notice of reconvened hearing.

At the second hearing, I reviewed the following information, contained at pages 3 and 4 of my interim decision, with both parties:

> *This hearing did not conclude after 70 minutes and was adjourned for a continuation. I informed both parties that I am seized of this matter and the hearing will be reconvened as a conference call hearing. I notified both parties that a copy of the Notice of Reconvened hearing with the calling instructions would be included with this decision. Both parties affirmed their understanding of same.*
>
> *The landlord confirmed that she completed her submissions at this hearing. I informed both parties that the reconvened hearing is only to hear remaining submissions from the tenants' lawyer (which she estimated at 15 to 20 more minutes), direct examination of the tenants' 3 witnesses (which the tenants' lawyer estimated at 5 to 10 minutes each), cross-examination of the tenants' 3 witnesses, response testimony from the landlord (which she estimated at 30 to 40 minutes), direct examination of the landlord's 1 witness (which she estimated at 5 to 10 minutes), and cross-examination of the landlord's 1 witness. Both parties affirmed their understanding of same.*

I informed both parties of the following information during this hearing. Both parties are directed not to submit any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing, except for the landlord's 1 witness and the tenants' 3 witnesses, as identified on the cover page of this decision. Neither party is permitted to file any new applications after this hearing date of March 3, 2023, to be joined and heard together with the tenants' application, at the reconvened hearing. The tenants are not permitted to file any amendments to their application, after this hearing date of March 3, 2023, and prior to the reconvened hearing. Both parties affirmed their understanding of same.

At the second hearing, both parties affirmed that the above information was correct.

Preliminary Issue – Service of Documents

At the first hearing and in my interim decision, the landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' lawyer confirmed receipt of the landlord's evidence. In my interim decision, I found that, in accordance with sections 88 and 89 of the *Act*, the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

At the first hearing and in my interim decision, I noted the following. The tenants' lawyer stated that the landlord was served with the tenants' late evidence package by registered mail and email on February 23, 2023. She said that the evidence was sent late. She claimed that the evidence was in response to the landlord's evidence. The landlord stated that she did not receive the tenants' late evidence. I informed both parties that I would not consider the tenants' late evidence because the landlord did not receive it and it was late, less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules*. I notified them that the tenants had ample time to submit evidence, since they filed their application on October 25, 2022, and this hearing occurred on March 3, 2023, over 4 months later.

At the first hearing and in my interim decision, the landlord stated that she served her 4 Month Notice to the tenants on September 29, 2022, by way of posting to the tenants' rental unit door. The tenants confirmed receipt on the above date, by way of the above method. In my interim decision, I found that, in accordance with section 88 of the *Act,* both tenants were duly served with the landlord's 4 Month Notice on September 29, 2022.

Issues to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession against the tenants?

Background and Evidence

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

Both parties agreed to the following facts at the first hearing. This tenancy began on July 1, 2011 with a former landlord. A written tenancy agreement was signed by the former landlord and the tenants. No new written tenancy agreement was signed when the landlord purchased the rental building and continued the tenants' tenancy in January 2021. Monthly rent in the current amount of $1,124.62 is payable on the first day of each month. A security deposit of $487.50 was paid by the tenants to the former landlord, which was transferred to the landlord, who continues to retain this deposit in full. The tenants continue to reside in the rental unit, which is an apartment in a multi-unit residential building.

A copy of the 4 Month Notice was provided. At the first hearing, both parties agreed that the landlord's 4 Month Notice identifies the following reason for seeking an end to this tenancy:

- *convert the rental unit for use by a caretaker, manager or superintendent of the residential property; and*
- *no permits and approvals are required by law to do this work.*

The landlord testified regarding the following facts at the first hearing. In September 2022, she made a decision to get a live-in caretaker for the residential property. The previous owners had their unit across the hall, which is a mirror unit. The rental unit's visibility, size, layout of the building, and irregular shape, faces the front, not the side. The tenants are trying to "vilify" the landlord, as per the witnesses that they are planning to call to testify. The landlord is a licensed real estate agent. The tenants are biased against the landlord. The landlord gave notice to the tenants, as they requested. The landlord's caretaker has been hired and is ready and willing to move into the tenants' rental unit. The caretaker lives far, and a manager cannot do everything, including

dealing with leaks and maintenance issues, as per the tenants' complaints. There are other rental buildings and the landlord cannot do everything because it is not fair to all the tenants. The landlord provided a petition form signed by other tenants at the residential property with their phone numbers, indicating that they want a live-in caretaker at the residential property. The landlord has no "bad faith" and has been "transparent." The landlord's maintenance issues include fire inspection, snow removal, garbage cleanup, dealing with three floods in the building, and boiler heat issues. The tenants complained regarding heat issues in the building. No one shoveled the walkway at the residential property when it was snowing, so the city fined the landlord. The tenants and their lawyer do not know what is involved in this.

The tenants' lawyer made the following submissions at the first hearing. The landlord bought the rental property in January 2021, and she owns other buildings, but the tenants do not know how many. This is a corporate landlord. There were two previous landlords. The previous manager lived in two different units because they were available and nicer. It is not a great vantage point. The tenants' rental unit number is not on the 4 Month Notice, which is not fatal. The tenants sent mail to the landlord's address on the 4 Mont Notice, but there was an issue with registered mail, so it was returned to sender. The tenants have doubts regarding the landlord's intentions. There is a good faith necessity. This is an older building from 1958, it is in a good location, it is a 3-storey walk-up building, there are no elevators, there is a storage locker room, 1 garbage bin, and landscaping. There are 16 units and if 1 unit is used for a caretaker, there are only 15 units left. The landlord does not require a caretaker in the building 24 hours a day, 7 days a week. If the caretaker needs to take care of other buildings for the landlord, then they will not be in the rental unit 24 hours a day, 7 days a week. The tenants in the building are older and longer term. People have been there for 10 to 18 years. 10 to 15 years ago, there were lower rental rates. There have been newer tenants in the last few years. There were vacant units when the landlord purchased the property. Tenant DF works from home and sees what happens in the building. There is evidence regarding personal observations when people move in. There has been a pattern of investment and improvement of the building since the landlord bought it. There has been a new roof, hallways, and aesthetic improvements. There have been evictions of tenants who pay lower rent, from the long-term community. The landlord wants to renovate the older building with long-term tenants, but nothing has been done over 10 years.

The tenants' lawyer made the following submissions at the first hearing. The tenants' witness MS was evicted in March, for the landlord to move into the property. Witness MS won a 12-month rent compensation hearing. There were multiple evictions of

tenants by the landlord. The tenants' witness KB got a notice for demolition of the rental unit, the landlord wants to renovate, and she does not want to settle the notice to end tenancy. The landlord is making business decisions. The other unit is open, available, and empty, but the landlord wants to displace these long-term tenants. The landlord has invested a lot in the building and it was sold for 12 million dollars, including the building next door. It is unclear the maintenance needs of the other buildings. The tenants are not concerned with the other buildings. This building could use a property manager instead of a caretaker. The tenants' rental unit is faces the front street. The caretaker should live at the back of the building to have a view of the back alley. It is not clear why the tenants have to vacate the rental unit, and it could be because the landlord wants a higher rent. The tenants noted an online rental advertisement. The maintenance fees were exaggerated by the landlord. The landlord can use a third party offsite manager, rather than a caretaker for 24 hours per day and 7 days per week. The landlord's caretaker statement is partial, with no rent amount or full agreement. There are no qualifications for the caretaker and no indication whether there was a criminal background check for the caretaker, even though this is a building with neighbours. Based on the social media photograph of the caretaker, witness DP, the tenants recognize him as the person hired to do work in the building by the landlord. The surname of the caretaker was spelled wrong in the tenancy agreement. There is no employment agreement for the caretaker. The tenants question whether the caretaker will be available 24 hours per day and 7 days per week and whether a caretaker is a reasonable necessity that is required. There are new laws regarding renovictions. The landlord's petition from other tenants in the building, indicating they need a caretaker, is not dated and does not indicate that an eviction of the tenants is required for their rental unit to be used by the caretaker. The tenants do not know the "transparency" of the landlord's 4 Month Notice. The tenants are calling their witnesses to show what they experienced, what they think regarding maintenance needs in the building, and the landlord's pattern of renovating and evicting tenants. One of the tenants SS, is not being called by the tenants. Another tenant JK, pays rent and lives in the building and signed a mutual agreement to end tenancy for June 2023.

The tenants' lawyer made the following submissions at the second hearing. Pursuant to section 49 of the *Act*, the landlord issued the 4 Month Notice and stated that no permits were required. There is no evidence about the landlord's other buildings, including whether units are vacant and acceptable. Property managers can do the job of caretakers. The landlord made brief submissions regarding her case at the first hearing. The rental unit has been the tenants' home for more than 12 years and it is a small community. The tenants want to stay there for their lifestyle and the rental unit location. The landlord has not indicated that she needs the unit. Why does the

caretaker have to live at the front of the building, not the back, as told to other occupants in the building. Residential Tenancy Policy Guideline 2B discusses good faith with no dishonest motive, and it is the landlord's burden of proof. The landlord has ended past tenancies, it has been a pattern of bad faith behaviour, and a dishonest motive. The tenants' witness, who provided a statement in the written evidence, has not been evicted, he is staying until summer, he indicated that the vantage point is at the back of the building, not the front, and he said that the landlord is targeting other tenants. There should be significant weight placed on his statement, even though he is not available for cross-examination by the landlord, regarding the authenticity or contents of his statement. Even if the landlord needs the rental unit for a caretaker, there has to be no dishonest motive, and the landlord has to show that only this unit can be used.

The landlord stated the following facts in response, at the second hearing. On September 28, 2022, the landlord discussed the issue with the tenants. The tenants were not happy with having to move, and offered to pay the landlord more money to stay. The caretaker moved across the hall from them and has lived in different units. The tenants' lawyer has misled on a number of points and has portrayed the landlord as "reckless and uncaring." Section 49(6)(e) of the *Act* permits the landlord to choose the suite for the caretaker. The landlord is not required to "yo-yo" the caretaker between different empty units. It is not a personal issue directed at the tenants. Many tenants in the building have requested a caretaker. The tenants' witness MS won her previous RTB hearing on a technicality because the landlord's late evidence was not accepted and that arbitrator made a decision regarding the landlord's lack of evidence. The tenants' witness MS accepted an offer of less money from the landlord to settle the issue because the landlord appealed the decision, and the appeal Court offered an opportunity to settle. The landlord obtained a permit from the city to do a physical inspection of witness KB's suite, she attempted to settle the issue, and he read her message but did not respond. The tenants' witness SE gave the landlord a box of chocolates, asked the landlord to hire him, and then quit after 3 months of working as the landlord's caretaker because he said it was too much work. He acted like a landlord and pointed out bad tenants to the landlord. The tenants' lawyer indicated that advertisements were placed online for vacant suites but there were none. The tenants lawyer claimed that the landlord's other building is a 4-plex, but it is a multi-family residential building. The tenants' lawyer sent documents by email to the landlord at an email address that does not exist, but she should know that she requires permission to send documents to a specific email. The landlord could not find the law firm where the tenants' lawyer works.

The landlord stated the following facts in response, at the second hearing. The tenants' lawyer cannot tell the landlord what to do, regarding a caretaker and the needs of the landlord's buildings. The tenants admitted that they saw the landlord's caretaker, witness DP, at the building, which confirms the landlord's case. The caretaker helps with everything and there is no need for him to have a university degree because he knows the job and is capable and experienced. The landlord has 2 kids and her 93-year-old father living with her, so she cannot handle all of her buildings on her own. Nothing in the *Act*, *Residential Tenancy Regulation* or Residential Tenancy Policy Guidelines prevent the landlord from choosing which suite she wants to use for the caretaker. The tenants are not "old or handicapped," they are a young working couple, and the landlord will provide them with a good reference to move to a new place. A previous unrelated RTB decision stated that it is the landlord's business choice, which they are entitled to make, even though there were 10 other units that were available, because the landlord can select any as appropriate. The other units are not relevant. The higher rent was not considered an ulterior motive. This is a "mom and pop" small business, not a large corporation. A live-in caretaker will help protect other tenants. There is questionable activity at the building and tenant SC reported her bike stolen recently. There have been break-in reports from other tenants in the building. The landlord is aware of the consequences of section 51 of the *Act* if she does not use the rental unit for the reason in the 4 Month Notice, and it is the high penalty for 12 months' rent compensation. The landlord is a licensed real estate agent in good standing, and she abides by a code of ethics. There are other tenants in the building, that are watching what the landlord is doing. On a balance of probabilities, the landlord requires the caretaker to move into the building, she has been "transparent," and she has provided a petition from all other tenants supporting a caretaker. Residential Tenancy Policy Guideline 2B indicates an honest intention, the landlord has "zero intent to defraud," and she needs help from a caretaker.

The tenants' witness MS testified regarding the following, in response to questions from the tenants' lawyer at the second hearing. She lived in a different unit at the same building as the tenants, she lived there since the end of 2007, and she was evicted in April 2021, after 13 years. She was paying $1,227.00 per month in rent. The landlord took over the building at the end of January 2021, and gave her an eviction notice for the landlord or a close family member to move in, to put kids into the penthouses. Witness MS left the rental unit and saw an advertisement online in November 2021, after renovations were done, offering the unit for double the rent of $2,500.00. She filed an RTB application to get 12 months' rent compensation, which she won, and other owed amounts were deducted from this total. The landlord said she would appeal the decision, contacted witness MS to settle, and witness MS agreed to the landlord's offer

of 50% of the amount that witness MS was awarded by the RTB. The person died one year later in February, but the advertisement was posted in November. The landlord had no evidence for the judicial review and the settlement was for the judicial review, not the RTB matter. The landlord told her that the monetary order had to be collected and witness MS knows it is hard to enforce, so she thought 50% was better than chasing someone who did not want to pay. Witness MS works in the housing industry. Witness MS wanted to start the new year off on a new note. There are no shareholders in the landlord's company, no person out of country, and the landlord's evidence probably would have been thrown out. This is a 16-unit building and the landlord let go of caretakers. Not much maintenance is required there, just grass for gardening and coin laundry collection. The RTB decision is not invalid, which she told the landlord.

The tenants' witness MS testified regarding the following, in response to questions from the landlord at the second hearing. She agrees that 50% of the RTB award is a substantial drop. She pays more rent now. The landlord sent evidence to her after she settled and agreed. It is part of the settlement that both parties acknowledge the amount and there is no admission of fault or guilt. She got the landlord's evidence that the landlord's grandmother passed away, but there was no evidence of the family shareholder corporation. She asked for $1,000.00 more, but then she accepted the landlord's amount.

The tenants' witness KB testified regarding the following, in response questions from the tenants' lawyer at the second hearing. He lived in another unit in the same building as the tenants, for 14 years, and was paying $1,054.58 per month in rent. Two months ago, he received a 4 Month Notice for demolition of his unit. He contacted the RTB for advice and filed an application to dispute the notice. His RTB hearing is scheduled for May 2023. The landlord said that other units in the building will be getting a notice. He gave a witness statement and provided text messages from the landlord. The landlord asked if he wanted to make a deal and then she claimed he was ignoring her because he was at work. The landlord wanted a documented settlement. There was no discussion of a caretaker unit. His opinion regarding exterior maintenance needs at the building is the outside of the building, which is depleted, the yard, there is no snow removal, and the back alley is not in good shape and has garbage. His opinion regarding interior maintenance needs is cleaning, but it is a pleasant place to live. He was not given a petition from the landlord, nor did he sign anything.

The tenants' witness KB testified regarding the following, in response to questions from the landlord at the second hearing. He had a 10-to-15-minute discussion with the landlord and sat down with her. He told her that he wanted to move on eventually. He

told her his job would buy him out. He said he wanted to go on golf trips, work and live out of country. The landlord had some documents for him to sign regarding the RTB dispute. He agreed to get back to the landlord quickly. The landlord gave him notice to voluntarily leave. The landlord texted his cell and he read it, but he is not supposed to discuss personal matters while at work.

The tenant's witness KB testified regarding the following, in response to re-direct questions from the tenant's lawyer at the second hearing. The landlord asked if he wanted to make a deal, but she did not offer an option for him to stay in his unit at the building.

The landlord's witness DP testified regarding the following, in response to questions from the landlord at the second hearing. He was calling into the second hearing, while on the skytain, after leaving work at the residential property. It takes him 1.5 hours on the skytrain to get to work every day at the residential property. He has been doing this work for two years. He is a journeyman carpenter by trade and "a jack of all trades." He wants to be the live-in caretaker for the landlord. He completes repairs, drywall work, plumbing, leak repairs, electrical repairs, and changing fixtures for the landlord at the residential property. In September 2022, he discussed being a caretaker for the landlord at the residential property. He is tired of commuting so far, and is waiting for a decision regarding this matter, so that he can move into the rental unit. He does not want to discuss his compensation from the landlord.

The landlord's witness DP testified regarding the following, in response to questions from the tenants' lawyer at the second hearing. He signed a tenancy agreement with the landlord, he believes in September 2022. The landlord spelled his surname wrong in the tenancy agreement, but he signed the tenancy agreement himself. There is no rent indicated on his tenancy agreement because it is part of his agreement with the landlord to be a caretaker at the residential property. He pays $1,800.00 per month in rent to the landlord. He will probably have to pay some kind of rent to the landlord, as a caretaker of the residential property, but probably not the above amount. He does not have an employment agreement with the landlord. He just pays rent and takes care of the residential property. This is an older building, so lots of work is needed. He takes care of some other buildings for the landlord, not just the residential property. There is not enough work for 80 hours a week. If he had to guess, there are about five other buildings owned by the landlord. The others are multi-dwelling units. He does not know if there are other vacant units in the landlord's other buildings. He has been a journeyman carpenter since 1989, he builds buildings, he is a tradesman, and he can do work from the concrete foundation up to the waterproof roof. He is not a licensed

electrician, and he did not know that licensing was required for plumbing. He has known the landlord for a couple of years. He has had arguments with the landlord but "what man or woman does not." He is not comfortable doing electrical work and the landlord has not pushed him to do so. There is enough work for 1 to 2 days per week at the residential property, including mopping, sweeping, cleaning, landscaping, and security services. It is better if he has a suite at the front of the building because there is a visual of the front door. The front of the building is where guests come into the building. There is an issue at the back of the building, which he has had to take care of, including break-ins. He will be on-site at the residential property every day. The landlord's other buildings are within 15 minutes walking distance of the residential property. He needs a secure place.

The landlord's witness DP testified regarding the following, in response to re-direct questions from the landlord. He is prepared to attend to any emergencies any time of the day for the landlord. He can go to the landlord's other buildings for help. He has a couple of days of work at the residential property. He is semi-retired. If he lives at the residential property, he is prepared to work every day.

Analysis

Burden of Proof and Rules

During the first hearing, I notified both parties that the landlord has the burden of proof, on a balance of probabilities, to prove the reason for issuing the 4 Month Notice to the tenants. The *Act,* RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reason on the notice.

The tenants, as the applicants, were provided with two NODRP documents from the RTB, which contains the phone number and access code to call into both hearings, when they first filed this application and after the first hearing was adjourned to the second hearing. The first NODRP is dated November 8, 2022, and the second NODRP is dated March 6, 2023.

The first NODRP, dated November 8, 2022, states the following at the top of page 2, in part (my emphasis added):

> ***The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.***

- ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.***
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- ***Parties (or agents) must participate in the hearing at the date and time assigned.***
- ***The hearing will continue even if one participant or a representative does not attend.***
- ***A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.***

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. During both hearings, I informed both parties that I had 30 days to issue a written decision, after the final hearing date.

The tenants received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the tenants to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants to present their submissions, evidence, and claims, since they chose to file this application on their own accord. The tenants had the benefit of legal advice from their lawyer at both hearings.

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent.*
>
> *If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*
> …
> *7.17 Presentation of evidence*

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

Both hearings lasted 223 minutes total, which is 3 hours and 43 minutes. Therefore, the tenants and their lawyer had ample time to present the tenants' submissions and evidence and respond to the landlord's evidence. The tenants' lawyer spoke for the majority of both hearing times, as compared to the landlord, which I informed her about during both hearings.

I find that the tenants' witness MS was a less credible witness. She provided her testimony in an upset, agitated, argumentative, and inconsistent manner. She repeatedly argued with the landlord while being cross-examined and asked the landlord questions instead of answering the landlord's questions. I cautioned witness MS to answer the landlord's questions only, not to ask the landlord questions, since the landlord was not testifying as a witness.

I cautioned the tenants' lawyer about interrupting witnesses, and asking leading questions and suggesting answers to the tenants' witnesses MS and KB, during the second hearing.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. Both parties provided voluminous evidence, uploaded to the RTB online dispute access site.

According to subsection 49(8)(b) of the *Act*, tenants may dispute a 4 Month Notice by making an application for dispute resolution within 30 days after the date the tenants received the notice. The tenants received the 4 Month Notice on September 29, 2022, and filed their application to dispute it on October 25, 2022. Therefore, the tenants are within the 30-day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 4 Month Notice. I informed both parties of same during the first hearing.

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, states the following, in part:

> *In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*
>
> *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. 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 (s.32(1)).*

On a balance of probabilities and for the reasons stated below, I find that the landlord provided sufficient testimonial and documentary evidence that she intends, in good faith, to convert the rental unit for use by a caretaker of the residential property. I accept that the landlord does not require any permits or approvals to convert the rental unit for the caretaker. I find that the landlord has no ulterior motives, dishonest intention, deceptive or fraudulent intentions. I find that the landlord is not trying to avoid obligations under the *Act* or tenancy agreement. I find that the landlord has met her onus of proof under section 49(6)(e) of the *Act*.

I accept the affirmed testimony of the landlord and the landlord's witness DP, that the landlord requires a caretaker, witness DP, to assist her in maintaining the residential property. I accept that witness DP will complete duties, including cleaning, landscaping, security services, repairs, and maintenance at the residential property. I accept that witness DP is currently performing this work for the landlord, has been completing this work prior to this hearing, and currently has a long commute to get to the residential property each time for work.

I find that the landlord provided a tenancy agreement for her caretaker arrangement with witness DP. I find that the misspelling of witness DP's surname, the blank rent amount, or the incomplete start date of tenancy, do not invalidate the tenancy agreement. Witness DP provided affirmed testimony that he signed the tenancy agreement, even though his name was misspelled by the landlord, which I find is a technical error. Witness DP provided affirmed testimony that his rent was to be determined based on his caretaker role, which I find is reasonable. The start date of tenancy in the tenancy agreement was the effective date of the 4 Month Notice, February 1, 2023, but the tenants have not moved out and both parties are awaiting this decision to determine same, which I find is required and reasonable.

I find that the landlord is not required to produce an employment contract, to confirm the caretaker role, as this is not required by the *Act* or the Residential Tenancy Policy Guidelines. The landlord and witness DP provided affirmed testimony regarding the above at both hearings.

I accept that the tenants have seen witness DP work as a caretaker at the residential property, as per their evidence. I accept that the landlord provided a signed petition from 9 other occupants at the residential property, including their names and phone numbers, indicating that they wanted a live-in caretaker. One of the signatories is the tenants' witness SE, who did not appear at the second hearing to testify, as originally indicated by the tenants. The tenants' own two witnesses, witness MS and witness KB, testified about the maintenance needs at the residential property. The tenants' lawyer made submissions regarding the maintenance, renovations, and money expended by the landlord at the residential property, to improve it, because it is an older building. Therefore, I find that it is reasonable that the landlord decided to hire a caretaker at the residential property, and that this will assist the landlord with her duties, given that she has her own family to care for, and other responsibilities as a landlord, so she cannot complete caretaker duties by herself.

The tenants' desire to stay at the rental unit, where they have been longstanding occupants, in a desirable area, is not relevant to this application. The fact that the tenants are part of a larger community with other longstanding occupants, is similarly not relevant.

I find that the tenants did not produce any expert witnesses, reports, or opinions, to support their application. However, the tenants attempted to proffer their two witnesses, witness MS and witness KB, as experts, asking their opinions on the maintenance

needs of the residential property, during the direct examination by their lawyer at the second hearing.

I find that a caretaker is not required to have enough work for "24 hours per day and 7 days per week," as suggested by the tenants. There is no requirement under the *Act* or the Residential Tenancy Policy Guidelines for same. Even if the landlord's caretaker is dealing with work at other nearby properties owned by the landlord, this does not discredit the need for a caretaker at the residential property.

I find that the tenants cannot decide the needs of the landlord, regarding maintenance or caretaking at the residential property. It is the landlord's legal responsibility and obligation to maintain the residential property "*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*," as required by section 32 of the *Act* and Residential Tenancy Policy Guideline 2B, as noted above.

It is within the landlord's prerogative to select an appropriate unit, that she deems fit, and to select a caretaker, rather than a property manager, to maintain the residential property. These are business decisions made by the landlord, who is paying for these services, not the tenants.

I accept that the tenants' rental unit is located at the front of the building, which overlooks an area of the property where guests enter and which requires security services, as affirmed by the landlord and the landlord's witness DP. While there may be issues at the back alley of the building, this does not require that the caretaker's unit be positioned only at the back of the building, as suggested by the tenants. I find that the landlord provided sufficient evidence that the tenants have complained about security issues at the residential property, along with other occupants.

The tenants provided evidence from two witnesses, witness MS and witness KB. I note that witness MS settled for substantially less money of 50% with the landlord, rather than having her claim reviewed by the Courts, pursuant to the landlord's appeal.

I note that witness KB continues to live in the building, he has not moved out or been evicted, and his claim to dispute his 4 Month Notice has not yet been determined by the RTB, since he has a future hearing scheduled for May 2023. I do not make a determination regarding the merits of his application, as it is not before me, and I have not included many facts related to his dispute for this reason, despite the fact that it was mentioned at the second hearing.

I find that the above issues with witnesses MS and KB do not show a pattern of behaviour of evicting tenants in bad faith, on the part of the landlord, as suggested by the tenants.

Accordingly, I dismiss the tenant's application to cancel the 4 Month Notice. I uphold the landlord's 4 Month Notice, dated September 29, 2022. I grant an order of possession to the landlord effective two (2) days after service on the tenant(s).

I find that the landlord's failure to include the tenants' rental unit apartment number on the 4 Month Notice does not invalidate or cancel the notice. Section 52(b) of the *Act* states only that a notice to end tenancy must "give the address of the rental unit," which I find that it does in this case, since the notice states the street address for the residential property.

Further, the tenants received and reviewed the 4 Month Notice, had ample notice of same, disputed it in this application, hired a lawyer for legal advice, submitted evidence, obtained witnesses to testify on their behalf, and attended 2 hearings. Therefore, I find that the tenants were not prejudiced by the landlord's above technical error.

The effective date on the 4 Month Notice of February 1, 2023, has long passed, as the date of the second hearing was March 31, 2023, and the date of this decision is April 4, 2023. At both hearings, I repeatedly cautioned the tenants that a two (2) day order of possession would be issued against them, if they were unsuccessful in this application, and they repeatedly affirmed their understanding of same.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) 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: April 04, 2023

Residential Tenancy Branch