



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL-4M

Introduction

The Tenants seek an order pursuant to s. 49 of the *Residential Tenancy Act* (the “Act”) cancelling a Four-Month Notice to End Tenancy for Demolition or Conversion of a rental unit signed on January 24, 2023 (the “Four-Month Notice”).

J.S. and T.S. appeared as the Tenants. D.M. appeared as counsel for the Landlord. H.V. appeared as agent for the Landlord. T.B. attended and identified herself as the property manager. M.M. attended for the Landlord and indicated she assisted in serving documents.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Is the Four-Month Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on February 1, 2014.
- Rent of \$1,920.67 is due on the first of each month.
- The Tenants paid a security deposit of \$900.00.

M.M. advised that the Four-Month Notice was posted to the Tenants' door on January 24, 2023 and sent out via registered mail on the same date. The Tenants acknowledge receipt of the Four-Month Notice on January 24, 2023 after finding a copy on their door. I find that the Four-Month Notice was served in accordance with s. 88 of the *Act* and received on January 24, 2023.

Is the Four-Month Notice Enforceable?

Pursuant to s. 49(6) of the *Act* a landlord may end a tenancy by given a tenant at least 4 months notice if it has all the necessary permits and approvals required by law and intends, in good faith, to demolish the rental unit.

Upon receipt of a notice to end tenancy issued under s. 49(6) of the *Act*, a tenant has 30 days to file an application disputing the notice. Review of the file shows the Tenants filed their application on February 18, 2023, such that they complied with the 30-day deadline imposed by s. 49(8)(b) of the *Act*.

Where a tenant has filed an application to dispute the notice to end tenancy, the burden of providing that the notice was issued in compliance with the *Act* rests with the landlord.

As per s. 49(7) of the *Act*, all notices issued under s. 49 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the Four-Month Notice provided to me and find that it complies with the formal requirements of s. 52 of the *Act*.

It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-29).

Landlord's counsel advises that the residential property, and two adjoining properties, are in the process of being redeveloped. Counsel tells me that the two adjoining properties have been vacated and asbestos testing has been completed. According to H.V., the owner is in the process of securing a contractor to undertake the asbestos remediation for the two other properties.

I am directed to a demolition permit in the Landlord's evidence dated January 23, 2023. I enquired when the demolition permit was issued by the municipality. Both counsel and H.V. advise that it was issued on January 23, 2023.

The Landlord's evidence also includes a letter dated March 27, 2023 from the acting director of development for the municipality. Counsel advises that this letter was obtained in response to the Tenant's application and re-emphasized the demolition permit was obtained on January 23, 2023. The March 27, 2023 letter states as follows:

Demolition permits have been issued for these houses at the three above-mentioned addresses.

This letter is to confirm that demolition is permitted prior to final consideration and adoption of the Zoning Amendment Bylaw [Redacted], provided protective barriers as per the [Redacted] have been installed around all existing trees. No other site preparation such as tree removal, soil deposit, preload or other such works is permitted prior to final consideration and adoption of Bylaw No. [Redacted]. Demolition of existing structures on the subject properties is a not a requirement of final consideration and adoption of Bylaw No. [Redacted], but is required prior to subdivision approval which would occur shortly after Bylaw No. [Redacted] has been adopted.

I have redacted information from the letter above that could be used to identify the individuals involved in the interest of their privacy.

The Tenants acknowledge having known for some time that the property would be redeveloped by its current owner. The Tenants argue, however, that the Landlord has served the Four-Month Notice without first obtaining all necessary permits and

approvals. I am told by the Tenants that the final reading of the bylaw authorizing the redevelopment has not passed through municipal council.

The Tenants' entire position rests upon the argument that without the redevelopment's approval, the Four-Month Notice was prematurely served as this was required in addition to the demolition permit. However, there is no requirement under the *Act* that a property in which a landlord intends to redevelop must also have approvals and permits in place for subsequent use of the land after demolition. In other words, whether the development in this instance is ever approved by council is irrelevant. Should a landlord wish to demolish a property and let the land be completely unused, that is their prerogative as the land's owner. They may only end the tenancy for demolition, however, provided they comply with the *Act*.

Further, the municipality in question does not make demolition contingent on the development plan being approved by council. As per the letter from the municipal planning department, "demolition is permitted prior to final consideration and adoption" of the redevelopment. Simply put, there is no further approvals or permits required for the demolition of the rental unit.

There was some discussion on whether demolition was required for the redevelopment plan to pass final reading at council. However, as alluded to above, that issue is irrelevant. The *Act* merely requires the landlord have a demolition permit in place prior to serving notice to end tenancy. Upon review of the Landlord's evidence, I accept that it has obtained a permit on January 23, 2023 for demolition of the rental unit, the day before the Four-Month Notice was signed and served.

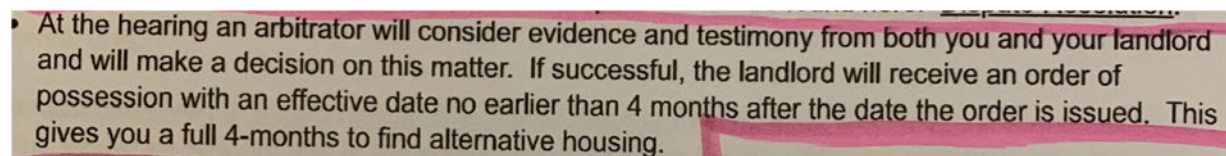
Looking at the question of good faith, I find that the Landlord has demonstrated good faith intention to demolish the rental unit. At the hearing the Tenants acknowledge that the adjoining properties have already been vacated, fences have gone up, and boards put across the windows. I am told and accept that the Landlord has retained a contractor for demolishing the properties and that asbestos remediation process required for the demolition of the adjoining properties has commenced. The Tenants provide a video of council deliberations about the project, which demonstrates the Landlord, and its development partner, is relatively far along on the approval process. I suspect it likely that the Landlord has already expended significant resources in the property's redevelopment, such that demolition is likely.

I find that the Landlord has demonstrated the Four-Month Notice was properly issued as it has a demolition permit for the property, obtained it before serving the notice, and have demonstrated a good faith intention to follow through on the demolition. The Tenant's application cancelling the Four-Month Notice is hereby dismissed without leave to reapply.

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession.

There was some discussion on the effective date of the order of possession. The Tenants refer me to an email they had with an information officer at the Residential Tenancy Branch, which states the following:



At the hearing an arbitrator will consider evidence and testimony from both you and your landlord and will make a decision on this matter. If successful, the landlord will receive an order of possession with an effective date no earlier than 4 months after the date the order is issued. This gives you a full 4-months to find alternative housing.

With respect to the advice given to the Tenants by an information officer at the Residential Tenancy Branch, as described in the email put into evidence, it is incorrect.

This is not an application under s. 49.2 of the *Act* for renovations, which requires a landlord to seek leave to end the tenancy such that the effective date of the order of possession comply with the notice requirement (see s. 49.2(4) of the *Act*). Further there is no contention that this is a fixed term tenancy. The tenancy agreement put into evidence by the Landlord shows the fixed term ended on January 31, 2016, such that it would have reverted to a monthly periodic tenancy as per standard term 12(3) set out in the Regulations and imposed by s. 12 of the *Act*.

As mentioned above, a landlords must give at least 4 months notice, which is pursuant to s. 49(2)(b) of the *Act*. In other words, the effective date of the notice must comply with the minimum 4-month requirement provided it is not a fixed term tenancy. In this instance, there is no dispute the Tenants received the Four-Month Notice on January 24, 2023, such that the effective date of the notice listed as May 31, 2023 is correct.

Following the general rule, the order of possession would be effective two days after it was received given this decision is made on May 30, 2023 and the notice requirement has been met on May 31, 2023.

Policy Guideline #54 provides guidance on the setting of the effective date of an order of possession and indicates that an arbitrator may have discretion to extend the general rule upon consideration of the following:

- Length of the tenancy.
- Evidence that it would be unreasonable to vacate in two days.
- Point up to which rent has been paid.

I am told by the Tenants that they have four young children, such that I accept it would be unreasonable for them to vacate in two days. Also, there is little doubt that this has been a long-term tenancy beginning in 2014.

Counterposing this is that rent is due on the first of each month, such that rent has been paid to May 31, 2023. However, there is no contention that the Tenants have failed to pay rent to the Landlord such that there should be no concern that they will pay on June 1, 2023. I note that the Tenants may still be entitled to compensation under s. 51(1) of the *Act*, which is equivalent to a month's rent, though I did not receive submissions from the parties on this point.

H.V. did mention demolition would proceed as soon as possible. However, it was unclear if there was a specific timeframe. I note that the structures on the adjoining properties have not yet been demolished, though I accept this is likely due to the time required for asbestos testing and remediation. I further note that the purpose for the demolition, being the redevelopment, has not yet been approved such that I accept demolition, though urgent from the Landlord's perspective, is not imminent.

On balance, I find that it would be appropriate to deviate from the general rule and set an effective date of the order of possession for June 30, 2023. I grant the Landlord an order of possession effective at 1:00 PM on June 30, 2023.

Conclusion

I dismiss the Tenants' application cancelling the Four-Month Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on June 30, 2023**.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court.

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: May 30, 2023

Residential Tenancy Branch