Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

Previous hearings were held on December 12, 2023, and January 2, 2024, in relation to the Applications filed by the Tenant. Interim decisions were issued on December 12, 2023, and January 3, 2023. For the sake of brevity, I will not repeat here the matters covered in those interim decisions. As a result, they must be read in conjunction with this decision.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant filed two Applications which were crossed by the Residential Tenancy Branch (Branch) and set down to be heard together. The first Application was filed on September 7, 2023, seeking:

- Reimbursement of costs incurred to complete emergency repairs under section 33 of the Act;
- Compensation for monetary loss or other money owed;
- An order for the Landlord to complete repairs;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order authorizing them to change the locks to the rental unit;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the $100.00 filing fee paid for this Application.

The second Application was filed on October 27, 2023, seeking:

- Cancellation of a Four Month Notice to End Tenancy for Demolition or Conversion to Another Use (Four Month Notice);
- Compensation for monetary loss or other money owed;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- Another claim type not already listed; and

- Recovery of the $100.00 filing fee paid for this Application.

The Tenant was unable to satisfy me that the first Application filed on September 7, 2023, was properly served on the Landlord and the Agent denied receipt. I therefore dismissed the first Application with leave to reapply, except for the Tenant's claim for recovery of the $100.00 filing fee, which I dismissed without leave to reapply.

Based on the testimony of the parties and the documentary evidence before me, I was satisfied that the Landlord named in the tenancy agreement, P.H., or their agent had been served with the Proceeding Package for the second Application by registered mail. Although the Agent argued that the wrong party, P.H. had been named as a respondent, and only G.C. should have been named, I disagreed. While G.C. was named in the Four Month Notice, P.H. is named as the Landlord in the tenancy agreement. The fact that G.C. issued the Four Month Notice on behalf of the Landlord, P.H., does not make G.C. the Landlord. As G.H. was not properly served, I removed them as a named respondent. As I was satisfied that the Landlord P.H. was served by registered mail, and their Agent M.R. was able to attend all three hearings on their behalf, the hearing therefore proceeded based only on the second Application against the Landlord P.H.

Service of Evidence

The parties acknowledged receipt of each other's documentary evidence, and neither party raised concerns about the service of evidence. I therefore accepted the documentary evidence before me from both parties for consideration.

Preliminary Matters

In their second Application the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Four Month Notice issued under section 49(6)(e) of the Act, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims were not sufficiently related to validity and enforceability of the Four Month Notice, I exercised my discretion to dismiss the remaining claims by the Tenant with leave to reapply, except for their claim for recovery of a $100.00 filing fee.

As a result, the hearing proceeded based only on the Tenant's second Application seeking cancellation of the Four Month Notice and recovery of the $100.00 filing fee paid for that Application.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Four Month Notice?

If not, is the Landlord entitled to an Order of Possession under section 55(1) of the Act?

Is the Tenant entitled to recovery of their $100.00 filing fee?

Background and Evidence

Although the Tenant acknowledged receipt of the Four Month Notice, they could not recall exactly when. The Agent stated that it was sent to the Tenant by registered mail on September 23, 2023, and provided me with the registered mail tracking number. The Agent stated that according to Canada Post, a notice card was left on September 26, 2023, a final notice was left on October 4, 2023, and the Four Month Notice was picked up by the Tenant on October 11, 2023. The Tenant filed their Application seeking its cancellation on October 27, 2023.

The parties disagreed about whether the Four Month Notice had been served in good faith so that a caretaker could occupy the rental unit. The Tenant, their Advocate, and the Tenant's two witnesses argued that the Landlord was simply trying to evict them, and that the Four Month Notice was served in retaliation because of the Tenant's first Application. They also argued that other units had been vacant, which could have been used for this purpose instead of evicting the Tenant.

The Agent disagreed, stating that no other units were vacant at the time the Four Month Notice was served, nor have any become available since. The Agent stated that although several other occupants have vacated and new occupants have moved in, tenancy agreements for those units were entered into before a new caretaker was found and before the Four Month Notice was served. The Agent stated that because they were fixed-term tenancies, and the agreements for those units had already been signed, those units cannot be considered vacant, and could not have been used for the caretaker. The Agent also denied that the Four Month Notice had been served in retaliation or bad faith.

Analysis

Section 49(6)(e) 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 required by law, and intends in good faith to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

I am satisfied on a balance of probabilities that the Four Month Notice was sent to the Tenant by registered mail on September 23, 2023, and therefore deem it served five

days later, on September 28, 2023, pursuant to section 90(a) of the Act. As the Tenant filed their Application seeking its cancellation on October 27, 2023, I find that they applied within the time limit set out under section 49(8)(b) of the Act. As a result, I find that the conclusive presumption provision set out under section 49(9) of the Act does not apply, and that the Landlord therefore bears the burden to satisfy me on a balance of probabilities that they had grounds under the Act to serve the Four Month Notice.

Although there was no dispute that the Landlord had employed caretakers for the property at various points in time, and that previous tenancies for other units had been ended for this purpose, nothing was submitted by the Landlord to satisfy me that at the time the Four Month Notice was served, a caretaker had been hired, or that accommodation was to be provided to any caretaker hired as part of their employment. The Tenant and their Advocate disputed that this was the case and argued that the Landlord had ulterior motives for ending the tenancy. They therefore argued that the Four Month Notice had not been served in good faith.

In Gichuru v. Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165. Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

It is clear to me from the documentary evidence submitted by the parties, and the testimony of the parties and their witnesses at the hearing, that there are ongoing issues between the Landlord and Tenant with regards to safety locks installed by the Tenant in the rental unit, and interactions between the Tenant and the Agent M.R. Coupled with the lack of documentary evidence from the Landlord demonstrating that a caretaker has been hired, I find that the Landlord has failed to satisfy me that the Four Month Notice has been served in good faith and I find it more likely than not, that they served the Tenant with the Four Month Notice due to the ongoing tenancy issues.

I therefore grant the Tenant’s Application seeking cancellation of the Four Month Notice and order that it has no force or effect. As the Tenant was successful in their Application, I also grant them recovery of the $100.00 filing fee under section 72(1) of the Act.

Conclusion

The Tenant’s Application seeking cancellation of the Four Month Notice is granted. The Four Month Notice is cancelled and I order that the tenancy therefore continue in full

force and effect until it is ended in accordance with the Act. The Landlord may not re-serve the Tenant with a new notice to end tenancy for this same purpose.

Pursuant to sections 72(1) and 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In lieu of serving and enforcing this monetary order, and pursuant to section 72(2)(a) of the Act, the Tenant may instead withhold $100.00, in one lump sum, from the next months rent payable under the tenancy agreement, should they wish to do so.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

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

Dated: March 11, 2024

Residential Tenancy Branch