DECISION

Introduction

The Tenant seeks 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 October 31, 2024 (the "Four Month Notice") and an order pursuant to s. 66 for more time to do so.

The Landlord, in its own application, seeks the following relief under the *Act*:

- an order of possession pursuant to ss. 49 and 55 after serving the Four Month Notice; and
- return of the filing fee pursuant to s. 72.

D.P. attended as the Tenant, who was joined by his daughter, R.D., and son, M.P., who both provided submissions on their father's behalf.

J. attended as the Landlord's agent. The Landlord's owners, P.S. and S.S., attended as well. The Landlord called a witness, T.N., who testified. Another witness, A.T., was identified at the outset of the hearing but was not called by the Landlord.

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.

Service of the Applications and Evidence

The Tenant advised that the Landlord was served with his application and evidence on March 28, 2025 by way of registered mail and by attempting to leave copies at the Landlord's office. The Landlord's agent acknowledges receipt of the Tenant's application materials, though raised issue with the timeliness of service saying it was received on March 31, 2025.

To be clear, Rule 3.1 of the Rules of Procedure requires applicants serve their application and initial evidence within three days of receiving the Notice of Dispute Resolution from the Residential Tenancy Branch. In this case, the Tenant's Notice of Dispute Resolution was generated on March 11, 2025 and given to the Tenant on the same day.

Irrespective of whether the Tenant's application materials were received on March 28, 2025 or March 31, 2025, they were served well outside the service deadline imposed by Rule 3.1. I accept that this, potentially, poses prejudice to the Landlord and their right to respond. However, I note that the Landlord's application, filed on March 17, 2025, is dealing with the same issue of whether the Four Month Notice is enforceable or not.

I asked the Landlord's agent whether there was any objection to proceeding since both applications are dealing with the same issue. The Landlord's agent indicated that response evidence was served, but that additional response evidence was gathered after the deadline for service of response evidence and could not be served or submitted as part of these proceedings. She asked if she could read some of this evidence into record. I indicated she would be free to do so in her testimony. Upon being advised of this, the Landlord's agent indicated she was prepared to proceed.

I find that the Landlord was served with the Tenant's application materials in accordance with ss. 88 and 89 of the *Act*. Though served in contravention of the deadline for service under Rule 3.1 of the Rules of Procedure, I find there is little prejudice in proceeding to the hearing, accepting that the Landlord may still respond as required.

The Landlord's agent indicates that the Landlord's application and evidence were personally served on the Tenant on March 19, 2025 and April 2, 2025. The Tenant acknowledged receipt of both packages, without raising issues. Accepting this, I find that Landlord's application materials were served in accordance with ss. 88 and 89 of the *Act*. Though the additional evidence may be slightly late in consideration of Rule 3.15 of the Rules of Procedure, I accept the evidence should be included considering the Tenant's failure to serve his application and evidence in a timely manner.

Preliminary Issue – Tenant's Capacity

The Landlord's evidence contains correspondence between it and representatives from the Public Guardian and Trustee's office (the "PGT"). The first email from a PGT representative is from January 17, 2025, requesting a copy of the Four Month Notice as it had come to their attention that the Tenant had been served with one by the Landlord.

In a subsequent email dated January 21, 2025 from a PGT representative stated the following:

> Ultimately it is up to [the Tenant] regarding his housing. We are his financial and legal authority, but this does not cross over into housing placement.

In a later email dated February 3, 2025, it is explained that the PGT has acting as committee of the Tenant's estate. With respect to the Tenant's housing arrangements, the PGT's responsibilities as committee are described as follows:

> …please note on Page 2 Decisions the PGT cannot make: Living Arrangements. This means we have no authority or control over clients/tenants personal behaviours and choices when it comes to the actual tenancy, we are simply here to make sure the appropriate payments are made and his legal rights are followed, and clients rental liabilities are covered.
> …
> It will be up to [the Tenant] to vacate this property as outlined in the Notice to End Tenancy provided to him, if [the Tenant] does not vacate the property [the Landlord] will have to take their necessary steps and we would not advocate on his behalf, as appropriate notice has been given.

The Landlord's agent advised that, despite this correspondence, courtesy copies of the Landlord's application materials have been sent to the PGT. This is confirmed by an email in evidence sent by the Landlord to the PGT on March 19, 2025. The Landlord's agent advised that the PGT would not be sending a representative to the hearing.

I canvassed the issue of the Tenant's competency with his son and daughter. The Tenant's daughter explained that the PGT is involved to manage her father's financial estate, but that he otherwise has mental capacity to conduct his own affairs. At no point did the Tenant's children express that their father was incapable of representing himself in these proceedings.

I accept that the PGT, as committee of the Tenant's estate, has been given notice of these proceedings by the Landlord. It is clear from the correspondence that it takes no position with respect to the proceedings, leaving the Tenant's housing arrangements to him. Similarly, I accept based on his daughter's testimony that there are no other barriers preventing him from acting on his own behalf in these proceedings. I accept he has capacity to do so for the purposes of these proceedings.

Accordingly, the hearing proceeded upon consideration of the Tenant's circumstances and the PGT's role in the management of his affairs.

Issues to be Decided

1) Should the Landlord be granted an order of possession based on the Four Month Notice?
2) Is the Landlord entitled to the return of the filing fee on its application?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

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

- The Tenant moved into the rental unit on February 1, 2015.
- Rent of $1,374.90 is due on the first day of each month.

I have been given a copy of the written tenancy agreement.

There was some disagreement on the security deposit and pet damage deposit paid by the Tenant, though both confirmed a security deposit and pet damage deposit had been paid. Despite this disagreement, I make no findings on this point as it is not relevant to the issue in dispute.

1) Should the Landlord be granted an order of possession based on the Four Month Notice?

Pursuant to s. 49(6) of the *Act* a landlord may end a tenancy if it has all the necessary permits and approvals required by law and intends, in good faith, to demolish the rental unit. As per s. 49(2)(b) of the *Act*, when a notice is issued under s. 46(6) the landlord must give the tenant at least 4 months notice.

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

A landlord may request an order of possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

Service of the Four Month Notice and Form and Content

The Landlord's agent advises that the Four Month Notice was personally served on the Tenant on October 31, 2024, with a subsequent copy personally served on November 13, 2024 with a copy of the updated demolition permit.

The Tenant denies receipt of the Four Month Notice as alleged by the Landlord, indicating he was in hospital until November 13, 2024. The Tenant, and his son M.P, indicate that the Four Month Notice was found taped to the rental unit door when he returned home on November 13, 2024.

Despite the dispute on the timing and method of service, I accept the Tenant did receive the Four Month Notice on November 13, 2024 when he found it on his rental unit door. I do not delve into the competing narratives on service since there is no dispute that it was, in fact, received by the Tenant.

Accordingly, I find that the Four Month Notice was served in accordance with s. 88 of the *Act* by having it posted to his door, which the Tenant acknowledged receiving on November 13, 2024.

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 by both parties. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, being March 31, 2025, sets out the grounds for ending the tenancy, and is in the approved form (RTB-29). I find that the Four Month Notice complies with the formal requirements of s. 52 of the *Act*.

Request for Additional Time to Dispute the Four Month Notice

As noted above, the Tenant acknowledges receipt of the Four Month Notice on November 13, 2024. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find the Tenant filed his application disputing the Four Month Notice on March 10, 2025. Accordingly, I find that the Tenant failed to dispute the Four Month Notice within the 30-day deadline for doing so imposed by s. 49(2) of the *Act*.

The Tenant seeks more time to dispute the Four Month Notice. Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed. Since the effective date of the Four Month Notice was March 31, 2025, I find that the limitation under s. 66(3) of the *Act* does not apply.

Policy Guideline 36 provides the following guidance with respect to “exceptional circumstances”:

> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> Some examples of what might not be considered "exceptional" circumstances include:
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> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
>
> …

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

The Tenant provided submissions that he suffered significant injuries in the fall of 2024. He testified to having broken his arm, neck, back, pelvis, and leg. This is supported by documents in evidence, which indicated he was admitted into a rehabilitation program on October 1, 2024 and subsequently discharged from the program on November 13, 2024.

The Tenant explained that due to his injuries, he faces significant challenges in his daily life. He estimates that it takes him between 5 to 6 times more time to complete tasks and that in the 4 weeks after being discharged, he was frequently going back and forth to the hospital.

Though I accept the Tenant faced significant challenges due to the injuries he sustained in the fall of 2024, I find that he failed to demonstrate exceptional circumstances exist to explain why he filed so late after receiving the Four Month Notice.

To be clear, the Tenant acknowledged receipt of the Four Month Notice on November 13, 2024. Even if I accept he went back and forth to the hospital 4 weeks after receiving the Four Month Notice, it still does not explain why his application was filed on March 10, 2025.

The PGT appears to have received notice of the Four Month Notice in January 2025, as evidenced by its email to the Landlord on January 17, 2025. Presumably this was done by the Tenant or someone assisting him. Despite informing the PGT, the Tenant did not file an application disputing the Four Month Notice for another two months.

The Tenant may have some explanation on why he did not file his application within 30 days of November 13, 2024. However, there is no evidence to support that the Tenant took any steps to file within a reasonable period after the acute period in his convalescence passed following his discharge from his rehabilitation program. I find that the Tenant failed to file this application as soon as was practicable under the circumstances. Further, as will be discussed below, there is no real merit in his application disputing the Four Month Notice.

Accordingly, I find that the Tenant failed to demonstrate that exceptional circumstances are present, such that his request for additional time under s. 66 of the *Act* is dismissed, without leave to reapply.

Order of Possession

As the Tenant failed to dispute the Four Month Notice within the proscribed time limit for doing so, and his request for additional time has been dismissed, I find that the Landlord is entitled to an order of possession under s. 55(2)(b) of the *Act*. I find that s. 49(9) of the *Act* has been triggered, such that the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Four Month Notice and ought to have vacated by no later than that date. As the Tenant has failed to do so, the Landlord is entitled to an order of possession.

To be clear, even had the conclusive presumption not applied, I would still have enforced the Four Month Notice. The Landlord has provided copies of the demolition permits, with the current permit expiring on June 30, 2025. I am told by the Landlords' agent that the residential property is part of several adjacent properties owned by the Landlord that are subject to redevelopment plans that have been considered and discussed with the Tenant for some years.

The Landlord's witness, J.N., testified that he is the contractor retained by the Landlord to undertake the redevelopment. He confirmed that he is managing the demolition of the properties and that there is a permit in place to demolish the residential property. J.N. further testified that they cannot proceed further with the redevelopment until the Tenant vacates the rental unit and the residential property is demolished.

I have been given photographs of the residential property by the Landlord and Tenant. The Landlord's agent says the Landlord's photographs were taken approximately two weeks ago. They show the arear around the residential property leveled, with the residential property standing as the sole structure on the site. An excavator is parked next to the residential property, though there are clear signs that it had driven across the front side of the property.

In brief, I accept that there was a valid permit to demolish the residential property when the Four Month Notice was served, with that permit subsequently being renewed and effective to June 30, 2025. I further find that the Landlord served the Four Month Notice in good faith as it is evident the residential property is subject to the redevelopment affecting the adjacent properties. I have little doubt that the Landlord intends to demolish the residential property once it is vacated by the Tenant.

The Tenant argued that the eviction should be dismissed, arguing he is facing significant hardship. However, hardship is not a relevant consideration on whether the Landlord was within its rights to serve the Four Month Notice to demolish the rental unit. Again, the Four Month Notice is in the proper form, was served in an approved method, received by the Tenant, all relevant permits are in place to demolish the rental unit, and the Landlord clearly intends to follow through with the demolition.

The Tenant says the Landlord had attempted to evict him earlier to demolish the residential property but withdrew that notice, arguing that this raises concern with the Four Month Notice.

I took these submissions from the Tenant that the Landlord is acting in bad faith. However, even if a previous notice to end tenancy for demolition was withdrawn by the Landlord, I am still satisfied that Four Month Notice was issued in good faith. There have been no previous findings of bad faith against the Landlord as it relates to this tenancy, nor have I been referred to any other decisions in which the Landlord was found to have issued similar notices in bad faith or having not followed through with a notice for demolish with respect to other tenancies.

Further, the preponderance of evidence, as supported by the photographs, the contractor's testimony, and the demolition permits themselves, all support that the Landlord will demolish the property. Again, I have little doubt this will occur soon after the Tenant vacates the rental unit.

The Tenant further argued that the construction work on the adjacent properties has disturbed his quiet enjoyment. Though I agree driving heavy equipment across the property in which the rental unit is located is breach of the Tenant's right to quiet enjoyment protected by s. 29 of the *Act*, it does not mean the Four Month Notice was improperly issued. The relief for the loss of quiet enjoyment is not to invalidate the Four Month Notice, rather it would come from obtaining an order that the Landlord comply with s. 29 or a claim for compensation due to the breach of s. 29. In either event, those claims are not before me.

I find that the Landlord is entitled to an order of possession under s. 55 under all circumstances.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

> An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for seven days after the order is received.
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> While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:
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> - The point up to which the rent has been paid.
> - The length of the tenancy.
>   - e.g., If a tenant has lived in the unit for a number of years, they may need more than seven days to vacate the unit.
> - If the tenant provides evidence that it would be unreasonable to vacate the property in seven days.
>   - e.g., If the tenant provides evidence of a disability or a chronic health condition.

- If the tenant has pets or children.

> An arbitrator is encouraged to also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.
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> […]
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> Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I accept that the Tenant faces significant mobility issues tied to his injuries and that he has had a long-term tenancy. The images in evidence show the Tenant has accumulated a significant number of belongings at the residential property. I have not been advised that rent for April has been unpaid, such that I accept it likely has been paid.

Counterposing this, I accept that the Landlord is facing financial pressures to demolish the residential property, with equipment idle and an inability to proceed until the residential property is demolished. There would be financial prejudice to the Landlord if an extended period were to be granted.

Under the circumstances, I find that 7 days is inappropriate for the Tenant to vacate the rental unit. I similarly accept that the Tenant has had many months to prepare for this date, such that he could have in that time obtained assistance from support groups or family. Since rent has been paid for the month, I make the order of possession effective for April 30, 2025, which permits the Tenant additional time to vacate while ensuring the Landlord's work is not significantly delayed.

2) Is the Landlord entitled to the return of the filing fee on its application?

As the Landlord was successful in its application, I find that it is entitled to its filing fee. Accordingly, I order under s. 72(1) of the *Act* that the Tenant pay the Landlord's $100.00 filing fee and direct under s. 72(2) of the *Act* that this amount may be retained by the Landlord from the security deposit.

Conclusion

The Tenant's application to cancel the Four Month Notice is dismissed, without leave to reapply.

I grant the Landlord an order of possession. The Tenant and any other occupants at the residential property shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on April 30, 2025**.

It is the Landlord's obligation to serve the order of possession on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme 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 Act.

Dated: April 9, 2025

Residential Tenancy Branch