Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MT

Introduction

This hearing was scheduled to hear a tenant's application to cancel a *4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* ("4 Month Notice") and more time to make the application.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that the tenant's Application for Dispute Resolution and supporting documents were sent to the landlord via registered mail on October 18, 2019 and received by the landlord on October 21, 2019. I confirmed that the landlord did not submit or serve any documentary evidence for this proceeding. The landlord stated she did not have very much time to do so but that she was prepared to proceed with this hearing today.

Preliminary Matter – extension of time to make application

In filing this Application for Dispute Resolution, the tenant, or her representative, indicated the tenant received the 4 Month Notice on June 28, 2019 although during the hearing the tenant provided varying testimony as to when she received the 4 Month Notice including: the day it was posted to her door, which was June 24, 2019, or sometime around that time. The tenant's representative stated the tenant told her she received it on June 28, 2019.

Section 49(5)(b) provides that a tenant in receipt of a 4 Month Notice has 30 days from the day they receive the 4 Month Notice to dispute it by filing an Application for Dispute Resolution. The tenant filed this Application for Dispute Resolution on October 15, 2019

which is well over 30 days from the date she received it, whether the tenant received it June 24, 2019 or June 28, 2019 or somewhere in between those two dates.

Section 66 of the *Act* provides that an arbitrator may extend or modify a time limit established by the Act only in **exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides information to determine what qualifies as exceptional circumstances:

> ***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 the said "reason" must have some persuasive evidence to support the truthfulness of what is said.*
>
> *Some examples of what might not be considered "exceptional" circumstances include:*
>
> - *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*
>
> *Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:*
>
> - *the party was in the hospital at all material times*
>
> *The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.*

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 willfully 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*

In this case, the tenant's representative put forth a submission that at the time of giving the tenant the 4 Month Notice, the landlord told the tenant that the 4 Month Notice was merely a formality, that she had nothing to worry about as the landlord would be re-homing her. The tenant's representative confirmed that she made this representation based upon her conversation she had with the tenant. Then, in September 2019 the landlord told the tenant the landlord would not be re-housing her due to clutter in the rental unit and the tenant would have to vacate the rental unit by the end of October 2019.

I noted that the parties had confirmed that the 4 Month notice had been served by posting on the door and that the tenant had found the 4 Month Notice posted to her door and I questioned when and how this conversation with the landlord took place. Since the tenant's representative was not privy to the conversation between the landlord and the tenant I asked the tenant to provide direct testimony and describe the conversation in greater detail including what was said, where the conversation took place, and when it took place.

The tenant testified that she did not have a conversation with the landlord when she received the 4 Month Notice. The tenant stated she had a conversation with the landlord "way, way earlier" and she also said it was approximately "60 days prior" without specifying prior to what. When pressed for an approximate date, the tenant stated the conversation was at the end of August 2019 before finally settling on December 2018 as being the approximate time she had a conversation with the landlord. The tenant stated in their conversation with the landlord she understood from the landlord that she would be re-housed. I noted that conversation was several months prior to receiving the 4 Month Notice to which the tenant stated she understood

something would be coming but she did not know what and she was somewhat surprised to receive the 4 Month Notice. The tenant stated that she understands the building is slated for demolition but believes the landlord has an obligation to re-house her since the landlord provides native housing and the tenant is native.

The landlord denied having the conversation with the tenant as described by the tenant. The landlord stated that a 4 Month Notice was served upon the tenants of all 17 units that are going to be demolished as part of phase 2 of the redevelopment of the property. After serving the tenant with the 4 Month Notice the landlord stated she did not hear anything from the tenant until after the landlord sent a reminder letter to the tenant that she had to vacate by the end of October 31, 2019 and when the tenant did contact her it was to inform her that she no longer required a four-bedroom unit. The landlord informed the tenant that the tenant would not be re-housed by the landlord.

The tenant's representative pointed to a document dated February 17, 2016 that reflects the minutes from a meeting the landlord had with its tenants with respect to a "redevelopment proposal" for the property. The tenant's representative submitted that in the document the landlord had stated they would re-house the tenants. The landlord testified a total of 33 living units have been or are slated for demolition in the near future to redevelop the property and that it tried to re-house as many tenants as they could but that there was a lack of available units for three families. I noted that the minutes reflect the following with respect to re-housing tenants:

> "The plan is to re-house current tenants to other [name of landlord] properties and tenants would be able to submit requests for their preferred location. [Name of landlord] will do their best to accommodate these requests based on availability of units."

The tenant has the burden to demonstrate an "exceptional circumstance" prevented her from filing her Application for Dispute Resolution to dispute the 4 Month Notice within the time limit for doing so. I was provided opposed oral testimony as to a conversation that took place between the landlord and the tenant. I found the tenant's oral testimony to be vague and unclear and lacking sufficient or corroborating evidence. The tenant had a difficult time providing the time frame when a conversation she described with the landlord took place and given her inability to recall that information with accuracy causes me to doubt that she accurately recalls the words actually spoken. Accordingly, I found the tenant's testimony in the face of opposition by the landlord to be not sufficiently compelling or persuasive. Nor, did I find the minutes from a meeting held in 2016 to adequately convey that tenant relied upon a material misrepresentation of the

landlord. Therefore, I find the tenant did not satisfy me that an exceptional circumstance prevented her from filing her Application for Dispute Resolution to dispute the 4 Month Notice within the time limit for doing so. Therefore, I dismiss the tenant's application to extend the time limit for disputing the 4 Month Notice.

I informed the parties of my decision to deny the tenant's request for an extension during the hearing. The tenant's representative then argued that the 4 Month Notice was invalid in any event. I have considered the representative's submissions in considering whether the landlord is entitled to an Order of Possession.

Issue(s) to be Decided

Is the 4 Month Notice valid and is the landlord entitled to an Order of Possession? If so, when should it be effective?

Background and Evidence

The tenant received a *4 Month Notice to End Tenancy for to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit* in June 2019 with an effective date of October 31, 2019. The tenant failed to dispute the 4 Month Notice within the time limit for doing so and, as provided above, I have dismissed her request for an extension of time to dispute the 4 Month Notice.

The 4 Month Notice was provided to me by the tenant and/or her representative. I note that it is in the approved form.

The tenant's representative had made the following submissions with respect to her position that the 4 Month Notice is invalid.

1. The 4 Month Notice was not signed.

I noted that the 4 Month Notice provided to me by the tenant and/or her representative did have a signature in the space provided for the landlord's signature. The tenant's representative conceded that the 4 Month Notice did contain a signature in the space provided for a landlord's signature.

2. The section that provides the details of service of the Notice was not completed. The section appeared as follows:

Complete details below at time of service (not required on landlord's copy; failure to complete does not invalidate notice).						
Notice served:	☐ In person	☐ On the door or in mail box or mail slot	☐ By mail	☐ By fax	on:	day / month / year
	☐ Other (e.g. director's order for substituted service):					

3. The landlord did not provide the tenant with copies of the permits. The landlord testified the tenant did not ask to see the permits.

4. The "details of work" section of the 4 Month Notice was not completed, as seen below:

I am ending your tenan[cy] because I am going to (ch[eck] the box that applies)
☒ demolish the rental unit.
☐ perform renovations or repairs that are so extensive that the rental unit must be vacant.
☐ convert the residential property to strata lots under the *Strata Property Act*.
☐ convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*.
☐ convert the rental unit for use by a caretaker, manager or superintendent of the residential property
☐ convert the rental unit to a non-residential use.

☒ I have obtained all permits and approvals required by law to do this work.

☐ No permits and approvals are required by law to do this work.

The work I am planning to do is detailed in the table below	
Planned Work	Details of Work
Phase 2/ Property Redevelopment	

The landlord testified that there were 33 units on the property. In phase 1 of the redevelopment the first 16 units were demolished. The remaining 17 units are going to be demolished as part of phase 2 of the redevelopment. The tenant's unit is one of the remaining rental units slated for demolition in phase 2 and the rental unit is slated for demolition between December 1, 2019 and January 1, 2020. The landlord testified that there are large signs on the property describing the planned work.

The minutes of the meeting dated February 17, 2016 that was included as evidence by the tenant described the planned redevelopment for the property as being the construction of four apartment buildings with a total of 188 new units.

In questioning the tenant, the tenant acknowledged that she does not doubt that the rental unit is going to be demolished. The tenant's representitive explained that their

objective is to compel the landlord to provide the tenant with new housing and/or at least more time to vacate the rental unit.

The landlord stated that it cannot provide the tenant with any more time to vacate the rental unit since the unit is going to be demolished in December 2019. The tenant's representative requested December 15, 2019 for a vacate date. The landlord was agreeable to November 30, 2019.

Analysis

My authority to resolve disputes is provided to me by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act*. My decision and any orders I issue are limited to those available under the *Residential Tenancy Act*. I make a point of this because the tenant appears to be seeking that the landlord re-house her. I cannot order parties to enter into a tenancy agreement for a different rental unit since section 2 of the Act provides that the Act applies where parties have entered into a tenancy agreement for a rental unit. The desire to enter into a tenancy agreement is not within the purview of the Act. As I informed the parties during the hearing, I cannot order the landlord to enter into a new tenancy agreement for a different rental unit with the tenant and to do so would exceed my jurisdiction. If the parties decide to enter into negotiations for a new tenancy agreement for a different rental unit the parties are at liberty to do so, but I cannot require that or prevent that.

The parties entered into a tenancy agreement for the subject rental unit and that tenancy/rental unit is subject of a 4 Month Notice. I am tasked with resolving the tenant's dispute, as requested by way of her Application for Dispute Resolution, which is cancellation of the 4 Month Notice and an extension of time to make the Application for Dispute Resolution. I have already made findings with respect to the request for an extension in the "Preliminary Matter" section of this decision and I proceed to consider whether the 4 Moth Notice is valid.

The 4 Month Notice was issued pursuant to section 49 of the Act. Section 49(9) provides for what happens if a tenant does not dispute the notice within the time limit for doing so, as provided under section 49(8). In this case, the tenant did not apply to dispute the 4 Month Notice within the time limit for doing so under section 49(8) which was 30 days after receiving the 4 Month Notice and I have dismissed the tenant's request for an extension for reasons provided in the Preliminary Matter section of this decision. Accordingly, section 49(9) applies.

Section 49(9) provides as follows:

> (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
>
> (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b) must vacate the rental unit by that date.

[My emphasis underlined]

Since the tenant did not file to dispute the 4 Month Notice within the time limit for doing so, and I have dismissed her application for an extension of time to do so, I find the tenant is conclusively presumed to have accepted that the tenancy would end on October 31, 2019 and was required to vacate the rental unit by that date pursuant to section 49(9) of the Act.

Section 55 of the Act provides for circumstances where a landlord will be provided an Order of Possession. Section 55(1) provides as follows:

> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant's representative argued the 4 Month Notice is not valid. Section 52 of the Act provides for the requirements for a notice to end tenancy, as follows:

> **Form and content of notice to end tenancy**
>
> **52** In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,

> (c) state the effective date of the notice,
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
> (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
> (e) when given by a landlord, be in the approved form.

Upon review of the 4 Month Notice provided as evidence by the tenant, I find that the notice was signed and dated by the landlord; the rental unit address is provided; an effective date is provided, one of the permissible reasons for ending a tenancy with a 4 Month Notice is indicated, and the 4 Month Notice is in the approved form. As such, I find the 4 Month Notice complies with section 52 of the Act.

The tenant's representative made specific submissions that the 4 Month Notice is not valid and I have addressed each of those submissions below.

1. The 4 Month Notice was not signed.

The 4 Month Notice provided as evidence by the tenant is signed in the space provided for the landlord's signature. Therefore, I find this reason to be without merit.

2. The details of service section of the notice was not completed.

As provided in the head of the relevant section: "failure to complete does not invalidate the notice". Therefore, I find the lack of service details on the notice itself does not invalidate the 4 Month Notice.

3. The landlord did not provide the tenant with copies of the permit(s).

Section 49 and 52 of the Act do not specifically require the landlord to provide a copy of permits when serving the 4 Month Notice, or at any other time. Rather, on the 4 Month Notice, under the section for providing information to parties, part 2 states: "You can ask your landlord to see the permits". The landlord testified the tenant did not ask to see the permits and the tenant did not refute that position. As such, I accept the tenant did not ask to see the permits. Therefore, I find this argument is not a basis for me to find the 4 Month Notice invalid.

4. The details of work section was not completed.

Section 68(1) of the Act provides that a notice to end tenancy may be amended. Section 68(1) provides:

> **68** (1) If a notice to end a tenancy does not comply with section 52 *[form and content of notice to end tenancy]*, the director may amend the notice if satisfied that
>
> (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
>
> (b) in the circumstances, it is reasonable to amend the notice.

The details of work section on the notice forms part of the landlord's obligation to provide the tenant with a reason for ending the tenancy, as required under section 52 of the Act. In this case the landlord has informed the tenant in the section above "details of work" that the reason for ending the tenancy is to demolish the rental unit and that this is part of phase 2 of the redevelopment of the property. I do not see any other reason for ending the tenancy other than demolition of the rental unit and the landlord would be merely repeating "demolition" if the "details of work" section were completed. As seen on the 4 Month Notice, there are several reasons a tenancy may be ended using a 4 Month Notice and I recognize that other reasons, such as renovation or conversion, could mean many different things are planned and, in those circumstances, more details would be warranted. However, in the case of a demolition, I find that reason for ending a tenancy to be straightforward and means one thing: the removal or destruction of the dwelling. Also of consideration is that the tenant acknowledged that she understands the rental unit is going to be demolished. Therefore, to complete that one section of the 4 Month notice, I amend the Notice to reflect "demolition" in the "details of work" section.

In light of the above, I find the 1 Month Notice is valid and complies with section 52 of the Act. Therefore, I find the landlord is entitled to an Order of Possession under section 55(1) of the Act.

Considering the 4 Month Notice had an effective date of October 31, 2019 and the rental unit is slated for demolition in December 2019 I find it reasonable and appropriate

to order the tenant to vacate the rental unit by November 30, 2019. With this decision I provide the landlord with an Order of Possession effective at 1:00 p.m. on November 30, 2019.

Conclusion

The tenant's application to cancel the 4 Month Notice is dismissed. The 4 Month Notice is valid and I provide the landlord with an Order of Possession effective at 1:00 p.m. on November 30, 2019.

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: November 13, 2019

Residential Tenancy Branch