Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Four Month Notice to End Tenancy for Renovations or Repairs dated November 25, 2019 ("Four Month Notice").

On February 6, 2020, the Tenant's advocate, E.N. ("Advocate"), the Landlord, A.R., and the Landlord's Counsel, T.C., ("Counsel"), appeared at the initial teleconference hearing and gave affirmed testimony. At the onset of this hearing, the Advocate stated that the Tenant was in the hospital with pneumonia and heart issues; the Advocate, therefore, requested an adjournment of the hearing, to which the Landlord agreed. On agreement of all Parties, I adjourned the hearing in order that the Tenant could attend and present the merits of his case at a later date.

A representative from the Residential Tenancy Branch ("RTB") emailed the Parties a new hearing document for the adjourned hearing that was scheduled over two months after the first hearing. Only the Landlord's Counsel appeared at the reconvened teleconference hearing and gave affirmed testimony. Counsel said that she had been in contact with the Advocate; however, she had not heard back from him in the weeks leading up to the reconvened hearing.

In the initial hearing, I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. The Parties did not testify at the initial hearing, given that it was adjourned. During the reconvened hearing, the Landlord was given the opportunity to provide his evidence orally through Counsel, and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the initial hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the initial hearing, the Landlord indicated that he had purchased the residential property on January 14, 2020 and, therefore, he has replaced the respondent identified in Application. Accordingly, and with no opposition from the Tenant's Advocate, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

In terms of the reconvened hearing, Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord's Counsel and I attended the reconvened hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter otherwise; accordingly, I commenced the reconvened hearing at 9:30 a.m. on April 16, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for over 20 minutes; however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. Further, no one contacted the RTB or the Landlord's Counsel to advise that neither the Tenant, nor his Advocate could attend the reconvened hearing.

Issue(s) to be Decided

- Should the Four Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The initial hearing did not proceed far enough for me to gather evidence of the tenancy between the Parties. In the reconvened hearing, Counsel did not have a copy of the tenancy agreement before her, therefore, she could not advise me of the details of the Parties' contractual arrangements in this regard. However, given the Parties attendance at the initial hearing and the evidence of the Parties overall, I find that a tenancy exists

in this set of circumstances between the Landlord and the Tenant, pursuant to the Act.

The Landlord submitted a 23-page written submission which includes the following undisputed evidence about the lead up to the Landlord's Four Month Notice to end the tenancies in the residential property:

> 4. On the week of November 4, 2019 notices were posted on all the tenants' doors in the building (the "Tenants") notifying them of the upcoming change of ownership of the building and the fact that the new owner may be contacting the Tenants.
>
> 5. On June 16, 2019, prior to purchasing the building a full non-invasive building inspection was done, and it was noted that all bathtubs appeared to be original with some 'needing immediate upgrading'.
>
> 6. In most of the units the ceiling below the bathrooms had drywall removed as pipes and drains had leaked over the years and the ceilings were never patched up.
>
> 7. At the time of purchasing the building the Landlord was aware that he would have to complete substantive renovations given the dire state of the facilities and high degree of wear and tear to building.
>
> 8. The renovation work planned for the building includes removing and replacing the tile, drywall, and bathtubs along with the toilets and vanities.
>
> 9. Given that no Hazmat survey has been done to the building the Landlord cannot say for certain, but given the age of the building, it is assumed that the drywall and flooring contain asbestos.
>
> 10. On the 4-Month Notice to End Tenancy the Landlord inaccurately wrote '10 weeks' for the duration of time needed for renovations. In fact, a 10-week duration is based on a perfect timeline and factors in addressing **one unit**.
>
> 11. From his queries with tradesman and other experts in the construction field, the Landlord has learned that 10 weeks is the fastest timeline obtainable and that given the scope of renovation work planned, the many trades people involved, the unknown amount of damage behind the walls (mold, rotten wood joists, etc.) a timeline of 20 weeks is more realistic and expected. Attached and marked as

Exhibit "**B**" is a letter from [the renovation company] with a detailed overview of the timeline of completion.

12. Between November 1, 2019 and November 25, 2019, the Landlord did his due diligence to ensure that he was aware of landlord and tenant rights and responsibilities, as well as the necessary procedures in respect to obtaining permits. This is evidenced in the following actions by the Landlord:

> Verbally confirmed with the RTB that change of landlords does not negate any eviction notices.
>
> **Verbally confirmed with [the City] that no permits were required for proposed scope of work.**
>
> **Verbally confirmed with RTB that eviction notices can be served when the city/municipality does not require permits for major renovations.**
>
> **On November 25, 2019 a plumber went into city hall to pull permits for removal of all 18 bathtubs and surrounding drywall and was told that permits were not required.**

13. On November 12, 2019 the Landlord started reaching out to all the tenants explaining his plans to address all overdue maintenance in the building and letting them know that major renovations would be required to ensure that the building will be around for another 40 years.

14. Prior to the Landlord taking over the building no maintenance schedule was in existence and it is likely that the building would have been condemned in as little as 5 years.

15. In an effort to exercise good faith and transparency the Landlord explained that most of the work that needed to be done would require vacant possession. Specifically, due to the following realities:

> **No water for weeks at a time.**
>
> **No working bathtub/bathroom for several months.**
> **Likelihood of asbestos and Worksafe BC not allowing untrained**

people in the contaminated areas.

16. The Landlord explained why he had to serve the 4-Month Notice to End Tenancy, what it entailed, the rights, compensation and timeline of the notice.

17. The Landlord then offered to assist the tenants in finding comparable accommodations, arrange movers should they require them, and increasing the financial compensation per unit for each tenant if they agreed to move out on or before February 1, 2020.

18. The Landlord also ensured the tenants that no formal move out notice would need to be given and that their units would not need to be cleaned and damage deposits would be returned in full.

19. On November 12, 2019 the Landlord called and spoke with [B.] of unit 975 and he ensured him that he would speak with everyone else in the unit. The Landlord subsequently left messages on November 12, 2019 and November 14, 2019.

20. In respect to unit [the residential property address], the Landlord was able to speak with [the Tenant, D., B., and R.R.], on November 18, 2019.

21. Given that most of the Tenants were not open to a mutual agreement to end tenancy, the Landlord was forced to post formal notices to end tenancy.

22. On November 26, 2019 the Landlord and the building manager/caretaker, [J.] posted 4-Month Notices to End Tenancy on the Tenant's doors.

[emphasis in original]

In the reconvened hearing ("Hearing"), I asked Counsel for a summary of the purpose of the renovations. She said that the residential property is "…quite a dilapidated complex of townhouses, so the Landlord spoke with me regarding whether the renovations needed permits or an expert to declare and prove…. For things that would require permits in Vancouver, you don't need them in [the residential property locale]."

Counsel directed me to Exhibit D of the Landlord's written submission, which is. an email dated November 25, 2019, from the Development Engineering and Sustainability Clerk in the City to the Landlord. This email states:

> Hello [A.],
>
> As per our phone conversation, you confirm the following for your renovation project:
>
> 1. Replace the toilets, vanity/wash basin, bathtub, shower tiles, drywall.
> 2. Replace the shower diverter.
>
> As confirmed with the building & plumbing officials, you will not need to apply for a building or plumbing permit for your project.
>
> Thank you, [M.]

Counsel also directed my attention to Exhibit "C" of the Landlord's written submissions, which is a letter dated November 21, 2019, from R.D., a commercial building inspection service company representative. In this letter, R.D. said that the renovations will require that the water in the residential property be shut off for extended periods of time. He also said:

> It is also our considered opinion during the removal of the walls, there is a high probability of exposure to asbestos which has known health risks, including cancer.
>
> Due to the extent of the repairs required and the potential exposure to asbestos, the suites will be non-livable for weeks and possibly months. It is therefore recommended alternative living accommodation be obtained and secured during this time.

Counsel said that one contractor advised the Landlord that the renovation would take approximately ten weeks; however, Counsel said that this was an estimate for one unit in the residential property, not for all the units. Counsel said that the Landlord has subsequently been advised that it will take closer to six months to finish the work on all of the units in the residential property.

Counsel noted that the Tenant was meant to be moved out by March 31, 2020, and it is now April 16, 2020, as of the date of the Hearing. She said the renovations were meant to go ahead, but with the Covid-19 state of emergency, the Landlord is trying to be reasonable about an agreed upon move-out date for the Tenant. Counsel said that "we can't expect him to move out before June, but I don't know if that's too early an

estimate. If we could agree on a reasonable move out date. . .."

Counsel said the Landlord:

> …explored finding another place for [the Tenant] to go or to give him a reasonable monetary settlement, but there was nothing in that area in [the City] – not much in that price range. I don't know if he's terminally ill; it sounded quite serious. It's hard to say. I don't know if he'll get out of the hospital, maybe he's already moved. The real estate agent who manages the property said that he thinks [the rental unit] is empty, but that may be because [the Tenant's] in the hospital.

Counsel said that the Tenant's Advocate "…has been so great to deal with; we both thought settlement. And [the Tenant] was open to that and was willing to move. It doesn't sound like it is a very nice accommodation, so he was happy, as long last the details could be worked out."

Analysis

Based on the documentary evidence and the testimony provided during the Hearing, and on a balance of probabilities, I find the following.

Section 49(6) of the Act allows a landlord to issue a Four Month Notice to end a tenancy, if the landlord wishes to, among other things, perform renovations or repairs that are so extensive that the rental unit must be vacant. Section 49(6) states:

> 49 (6) 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 do any of the following:
>
> . . .
>
> (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
>
> [emphasis added]

Section 49(8) of the Act allows a tenant may dispute a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. Pursuant to Rule 6.6, a landlord has the onus of proof to establish on a balance of probabilities that the notice to end the tenancy is valid. The landlord must provide that it is more likely

than not that the contents of the notice to end tenancy are correct.

I find that the Landlord provided sufficient evidence that the planned renovations of the residential property do not need permits, despite being so extensive that they require vacant possession of the rental units.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I find that the Four Month Notice issued by the Landlord meets the requirements as to form and content, and that the Landlord is entitled to an order of possession pursuant to sections 49 and 55 of the Act.

Accordingly, I dismiss the Tenant's Application to cancel the Four Month Notice, and I award the Landlord with an Order of Possession. As the effective date of the Four Month Notice has passed, and the Parties have not provided a date on which they agree to end the tenancy, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant pursuant to section 55 of the Act.

Given the Tenant's ill health and the emergency state under which we are all living, I urge the Parties to continue to discuss these matters and to arrive at a mutually agreeable end date to this tenancy.

Conclusion

The Tenant is unsuccessful in his Application to cancel the Four Month Notice, as neither he nor his Advocate attended the reconvened Hearing to present the merits of his Application. The Landlord's Counsel attended the reconvened Hearing and presented sufficient evidence to support the Landlord's burden of proof in this matter.

Given that the effective vacancy date of the Four Month Notice has passed, and pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order**.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 20, 2020

Residential Tenancy Branch