



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FFT

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 Renovation or Repair of the Rental Unit dated March 18, 2020 ("Four Month Notice"), and to recover the cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("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. The Landlord said he had received the Application and documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any evidence to the RTB for consideration, therefore, he did not have any evidence to serve on the Tenant.

Preliminary and Procedural Matters

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

Issue(s) to be Decided

- Should the Four Month Notice be cancelled or confirmed?

- If the Four Month Notice is confirmed, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the Tenant sold the rental unit to the Landlord in March 2014, and that she rented it back from him starting in March 2014. The Parties agreed that the Tenant pays the Landlord a monthly rent of \$1,230.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security or pet damage deposit.

The Parties agreed that the rental unit is a mobile home, which is located on the Landlord's property, rather than in a mobile home park. As such, this Application was made pursuant to the *Residential Tenancy Act*, rather than the *Mobile Home Park Tenancy Act*.

The Tenant submitted a copy of the Four Month Notice. In the hearing, the Landlord confirmed that the Tenant was served with the Four Month Notice in person on March 18, 2020, and sent it by registered mail on the same day. The Tenant confirmed receipt of the Four Month Notice on March 18, 2020, and applied to dispute it on April 1, 2020.

The Four Month Notice was submitted into evidence by the Tenant. It was signed and dated March 18, 2020, it contains the rental unit address, and it has an effective vacancy date of August 1, 2020.

The Four Month Notice states the following as reasons for ending the tenancy:

I am ending your tenancy because I am going to: perform renovations or repairs that are so extensive that the rental unit must be vacant for five months.

The following further details were provided on the Four Month Notice:

- Replace flooring throughout,
- Paint entire residence,
- Replace all fixtures, tub, toilet, sink, etc.,
- Create master bedroom,
- Add patio doors to family room,
- Repair damaged ceiling,

- Redoing bay window,
- Paint and replace kitchen upper & lower cabinets & counters,
- All new countertops,
- Remove some panelling & replace with drywall,
- Paint & repair deck, railings, & stairs,
- Disconnection of power, water and sewer,
- Excessive dust and noise.

Five months time line required due to extensive renovations to every room in residence.

In the hearing, the Landlord said that he does not need permits for this renovation. He said:

I don't need a permit. I was a plumber, so I can do the plumbing work. I own other homes and I do it all. We live in the Regional District, and I don't have to have permits. We went to her bedroom and there was a tick, tick, tick... I asked what was that noise? The breaker box was glitching. Right away I hired an electrician and got that fixed. If I had to pull the panel, I would need a permit. It's just painting, and flooring.

I know I don't need a permit. I've talked to carpenters. . . if I was adding onto the home maybe I'd need a permit. Up to about four years ago, you didn't need a permit, but now anything if you wanted to build a green house or shed... now you have to submit a plan. It's all inside work, so I don't need a permit for that.

I advised the Parties that given the current state of emergency in British Columbia, that even if I confirm the Four Month Notice, it may not be enforceable in court, if the Province is still in a state of emergency on the effective vacancy date. I recommended that the Parties call the RTB about this or any other tenancy matter for more information.

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) 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 . . . "(b) renovate or repair the rental unit in a manner that requires the

rental unit to be vacant.”

Rule 6.6 states that when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove on a balance of probabilities that the reasons for the notice are valid.

RTB Policy Guideline #2B (“PG #2B”): “Ending a Tenancy to Demolish, Renovate...” sets out the legislative framework. It states:

Section 49(6) of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to:

1. demolish the rental unit;
2. renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- ...

PG #2B also states that

B. PERMITS AND APPROVALS REQUIRED BY LAW

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

...

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.

[first emphasis in original]

PG #2B provides further clarification on the requirement for the rental unit to be empty and states that the repairs must be so extensive that the only way to complete the

repairs is for the unit to be vacant.

While the Landlord stated that no permits are required, which he said he knew, because he is a plumber and had talked to some carpenters about it, there was no documentary evidence before me that supported or established this claim. A landlord is obliged to have the necessary permits or proof that permits are not required, such as a letter from the Regional District, which might confirm that the work being completed does not require permits.

As noted above, the Landlord has the burden of proof on a balance of probabilities to establish that the Four Month Notice is valid. Without sufficient evidence to establish that permits are not required, and that the repairs require vacant possession of the rental unit, I am not satisfied that the Landlord had cause to end the tenancy with a Four Month Notice. As such, I find that the Tenant is successful in her Application to cancel the Four Month Notice.

In *Allman v. Amacon Property Management Services Inc.* (2006 BCSC 725), the British Columbia Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit, just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the “nature and extent” of the renovations or repairs require the rental unit to be vacant.

Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will:

- make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or
- result in the prolonged loss of an essential service or facility (e.g., the electrical service to the rental unit must be severed for several weeks).

PG #2B includes: “Appendix A: Common Renovations or Repairs”. This Appendix provides examples of how common renovations or repairs are likely to disrupt the tenant and likely to need vacant possession.

Type of Renovation or Repair	Disruption to tenants	Requires Vacancy?
Plumbing		
Replacing faucets and fixtures	Usually minimal	Unlikely

Replacing bathtubs/toilets	Usually minimal	Unlikely
Interior		
Replacing cabinets/vanities/countertops	Usually minimal	Unlikely
Interior painting	Usually minimal	Unlikely
Replacing flooring/baseboards	Usually minimal	Unlikely
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy

The Landlord mentioned mainly needing to do painting and flooring in the rental unit; however, he also noted possibly having to repair the ceiling and replace panelling with drywall. As such, some of the intended renovations may require permits, as well as vacant possession. However, the above noted chart indicates that the bulk of the repairs are unlikely to require this, other than for the speed and convenience of doing them with the rental unit vacant.

I find that the Landlord has provided insufficient evidence to support his belief that permits are not required and that the rental unit needs to be vacant during the renovations. Accordingly, I find that the Tenant is successful in her application to cancel the Four Month Notice. I cancel the Four Month Notice; it is void and unenforceable.

I also grant the Tenant recovery of the \$100.00 Application filing fee. The Tenant is authorized to deduct \$100.00 from one rental payment owing.

Conclusion

The Tenant is successful in her Application to cancel the Four Month Notice, as the Landlord provided insufficient evidence that permits are not needed for his planned renovation and that vacant possession is needed. Accordingly, the Four Month Notice is cancelled and is null and void.

I also grant the Tenant with recovery of her \$100.00 Application filing fee, and authorize her to deduct \$100.00 from one upcoming rent payment in satisfaction of this award. 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: May 26, 2020

Residential Tenancy Branch