Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated June 30, 2022 (the "Four Month Notice") pursuant to section 49;
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's agent LY, and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents for dispute resolution. The Landlord acknowledged receipt of the Tenants' notice of dispute resolution proceeding package, amendment package, and documentary evidence. The evidence indicates that the Landlord's address was initially incorrect, so the Tenants amended and re-served their documents. I find the Landlord was sufficiently served with the Tenants' documents for dispute resolution pursuant to section 71(2) of the Act. The

Tenants also acknowledged receipt of the Landlord's evidence. I find the Tenants were served with the Landlord's evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancel the Four Month Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on December 1, 2019 with a former landlord and is month-to-month. Rent is $2,700.00 due on the first day of each month. The Tenants paid a security deposit and pet damage deposit of $1,350.00 each.

A copy of the Four Month Notice has been submitted into evidence. The Four Month Notice is signed by the Landlord and has an effective date of October 31, 2022. It indicates the reason for ending the tenancy is for demolishing the rental unit. The Four Month Notice indicates the Landlord has obtained "all permits and approvals required by law to do this work", described as a "building permit" issued by the municipality on June 30, 2022. The notice provides the following additional details work (portions redacted for privacy):

> *The City of [redacted]'s Bylaw (No. 7551) requires that you cut and cap the sanitary connection service lead (SIC4077) and storm connection service lead (STIC57093) at your side of the PL prior to demolition /preloading to prevent dirt and particles infiltration into the city's IC and Mainlines. Those two requirements are in conflict of tenants living inside the house . Therefore, the jobs are not able to complete while tenants are still living there. However, RTB has approved an exception to serve the tenant a 4-month notice to end the tenancy agreement if they receive the proofs of building permit application.*

The proofs are attached with this notice.

Attached to the Four Month Notice is an email screenshot from an individual named CG which states in part as follows:

> *Your Building Permit Application is tentatively accepted subject to application fee of $759.25, please respond by email to confirm your selected payment method: […]*

Also attached are an invoice from the municipality dated June 30, 2022 for $759.25 with a payment receipt, and a screenshot of a follow-up email from CG dated June 30, 2022 which confirms that payment was received. This email indicates that CG is a departmental associate in the municipality's building approvals department.

The Tenants' application acknowledges receipt of the Four Month Notice via email on June 30, 2022.

The Landlord testified he purchased the rental unit in May 2022. The Landlord explained that his plan is to demolish the rental unit and build a new house on the property. The Landlord stated that after the purchase completed on May 23, 2022, he started doing the necessary preparation work with his contractors, including his designer, builder, and architect. The Landlord testified that on June 30, 2022, he submitted payment to the city for the permit application and served the Tenants with the Four Month Notice.

The Landlord explained that prior to June 30, 2022, he had communicated with the Residential Tenancy Branch (the "RTB") regarding an issue with the permit application process. The Landlord testified that one of the pre-conditions for the city to issue the permit is that the sanitary lead on the property needs to be disconnected and capped, which cannot be done if there are still people living on the property. The Landlord stated that his builder who has experience building other properties in the same city confirmed that this is a pre-requirement for issuing the permit. The Landlord testified he was told by the RTB that if he has done everything he could before the permit would be issued, then he can explain this to the Tenants and issue the Four Month Notice.

The Landlord testified that he is acting in good faith as he wishes to demolish the rental unit and build a new house. The Landlord testified he confirmed with his rental manager

that if there are people residing in the rental unit, the Landlord cannot just cut the sanitary services. The Landlord testified there is a conflict because the Tenants want the Landlord to have a permit in hand before they will agree to move out. The Landlord stated this was the reason why he checked with the RTB. The Landlord testified he and his contractors have done everything they can before issuing the Four Month Notice.

The Landlord testified that the original date for disconnecting the services and inspection was scheduled for mid-October 2022 before he became aware of this dispute, but as that date has already passed, he rescheduled the inspection to mid-December 2022. The Landlord testified that the city will send staff to the job site to inspect the cutting and capping of the sanitary system. The Landlord stated that if everything meets the city's requirements, then the city will issue the permit.

The Landlord submitted a copy of an email dated July 14, 2022 from a city employee, LN to his builder. This email states as follows (portions redacted for privacy):

> *Be advised that prior to your single family dwelling/commercial construction permit issuance, (Bylaw No. 7551) requires that you cut and cap the sanitary connection service lead (SIC4077) and storm connection service lead (STIC57093) at your side of the PL prior to demolition /preloading to prevent dirt and particles infiltration into the City's IC and Mainlines.*
>
> *Failing to undertake this implementation will result in you paying the actual costs incurred by the City in cleaning/repairing the resulting damage plus 20% contingency fee.*
>
> *1. For City Service Connections locations, please consult [website]*
> *2.Please Note: Any excavation within the drip line of a tree requires a Certified Arborist supervision. Failure to have a Certified Arborist on site will result in fines ranging between $750 and $10,000. [city] Tree Bylaw: [phone number] or [email]*
> *3). Owners are responsible for hiring their own private arborists*
> *4). Please contact [phone] or [email] to schedule your service connection cut and cap implementation witness and verification. [48 HOURS NOTICE REQUIRED].*
>
> *****NO WORK TO COMMENCE WITHOUT THE PRESENCE OF THE ENGINEERING INSPECTOR****

Please acknowledge receipt and advise your action plan within seven (7) days of this email contact.

The Landlord submitted a second email with an identical message sent on May 20, 2022 from VE, whose email signature indicates that he is an engineering inspector with the city's department of Engineering & Public Works. This email refers to a different project address in the subject line.

A copy of Bylaw No. 7551 has been submitted into evidence, which states in part as follows:

1.3 Requirements Prior to Demolition

1.3.1 A property owner wishing to demolish a building connected to the City sanitary sewer system or the City drainage system must not do so until all connections to both the sanitary sewer system and the drainage system have been disconnected and capped in a manner satisfactory to the General Manager, Engineering & Public Works.

1.3.2 Where a property owner chooses not to disconnect and cap the connection to either the City sanitary sewer system or the City drainage system, or both, the General Manager, Engineering & Public Works may direct that the City undertake such disconnections and capping at the expense of the property owner and the property owner shall forthwith pay the City the demolition charges set out in Section 1 of Schedule A.

1.3.3 Where a property owner fails to disconnect the connection from such property owner's property to the City sanitary sewer system or the City drainage system, or both, in accordance with this bylaw and such failure results in damage to the City sanitary sewer system or the City drainage system, the property owner must pay the actual costs incurred by the City in repairing the resulting damage.

1.3.4 Any costs incurred by the City under the provisions of subsection 1.3.2 or 1.3.3 if not paid by December 31st of the year in which they were incurred are considered to be taxes in arrears on the property in question.

The Landlord acknowledged that he had offered the Tenants additional compensation if they agreed to move out of the rental unit earlier, which the Tenants refused.

The Landlord also submitted additional evidence including:

- Email submission to the city dated June 26, 2022 for building permit / demo permit / tree permit
- Reports and drawings for building permit application including ArcGIS web map, topographical survey, structural drawings, BC Energy Compliance Report,
- Completed and signed forms (Schedule F Owner's Undertakings, Schedule 1 Site Disclosure Statement, Zoning Regulation Summary)
- Proof of payment of $8,607.50 in fees required by the city (demolition permit fee, recycling schedule A fee, recycling schedule B fee, tree removal fee, water shut off fee, and damage deposit)
- Invoices from the Landlord's builder and designer
- Email correspondence with the RTB

In response, one of the Tenants, RR, testified that there are no permits in place for demolition of the rental unit. RR testified they emailed CG to confirm that no permits were in existence at the time that the Four Month Notice was served.

RR testified they also contacted the RTB and was told that no exception was granted for the rental unit. RR stated they understood that the Landlord has made a permit application with the city, but the Tenants' dispute is that the Landlord does not have a valid permit at this time. RR stated the Tenants would be "happy to follow the rules" once the Landlord "follows the process" and submits a four month notice to end tenancy with a valid permit.

RR argued that the demolition application states that it is the permit holder's responsibility to ensure that the bylaw is complied with. RR argued the relevant bylaw sections explain what happens if the bylaw is not complied with.

RR testified that the Tenants have a young child with a second baby due in February 2023, so the Tenants would need around 1 year to find a new place to live.

The Tenants submitted email correspondence with the city, the Landlord's agent, and the RTB into evidence. The Tenants also submitted a blank copy of the demolition application.

Analysis

1. Are the Tenants entitled to cancel the Four Month Notice?

Section 49(6)(a) of the Act permits 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 demolish the rental unit.

Section 49(7) of the Act requires such a notice to comply with section 52, which states:

> **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.

Section 49(2)(b) further requires that the effective date of a landlord's notice under section 49(6) must be:

> (i) not earlier than 4 months after the date the tenant receives the notice,
> (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
> (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I have reviewed a copy of the Four Month Notice and find that it complies with the requirements set out in sections 52 and 49(2)(b) of the Act.

Based on the parties' evidence, I find the Tenants were served with the Four Month Notice in accordance with section 88(j) of the Act on June 30, 2022.

Section 49(8)(b) of the Act permits a tenant to dispute a notice to end tenancy under section 49(6) within 30 days of receiving such notice. Therefore, the Tenants had until

July 30, 2022 to dispute the Four Month Notice. Records indicate that the Tenants submitted this application on July 18, 2022. I find the Tenants made this application within the 30-day dispute period required by section 49(8)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use ("Policy Guideline 2B") states as follows regarding ending the tenancy to demolish the rental unit:

> **A. LEGISLATIVE FRAMEWORK**
> 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:
>
> a) demolish the rental unit; […]
>
> […]
>
> **C. DEMOLITION**
> Section 49(6)(a) of the RTA allows a landlord to end a tenancy to demolish a rental unit. Demolition means the complete and irreversible destruction of the rental unit. Usually, but not always, this involves the destruction of the building containing the rental unit. This may also involve partial demolition of a building so that the rental unit ceases to exist.
>
> If the tenancy is ending under section 49(6)(a), the tenant has no right of first refusal to enter into a new tenancy agreement with the landlord for the rental unit.

According to Policy Guideline 2B, "permits and approvals required by law" include "demolition, building or electrical permits issued by a municipal or provincial authority".

> When ending a tenancy under section 49(6) of the RTA or section 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they 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.

> […]
>
> The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.
>
> […]
>
> <u>If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.</u>
>
> (emphasis added).

Policy Guideline 2B also explains the requirement of "good faith" as follows:

> **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 RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards

required by law and makes it suitable for occupation by a tenant (section32(1) of the RTA).

Based on the evidence before me, I am satisfied that the Landlord intends in good faith to end the tenancy for the reason stated in the Four Month Notice, that is, to demolish the rental unit. I find the evidence does not suggest any ulterior purpose or dishonest motive on the part of the Landlord.

Furthermore, I am satisfied that the Landlord has completed all possible steps for obtaining a demolition permit prior to issuing the Four Month Notice. I accept the Landlord's evidence that he took the following steps before giving the Four Month Notice to the Tenants:

- The Landlord hired professionals to prepare reports and drawings submitted to the city on June 26, 2022, including ArcGIS web map, topographical survey, structural drawings, and BC Energy Compliance Report.
- The Landlord submitted the necessary application forms to the city on June 26, 2022 (Schedule F Owner's Undertakings, Schedule 1 Site Disclosure Statement, and Zoning Regulation Summary).
- The Landlord paid $8,607.50 in fees required by the city on June 30, 2022 (demolition permit fee, recycling schedule A fee, recycling schedule B fee, tree removal fee, water shut off fee, and damage deposit).
- By doing the above, the Landlord completed all items in the city's Application Submission Checklist.

In addition, I have carefully reviewed section 1.3 of Bylaw No. 7551, the city's demolition application form, and the city's emails dated May 20, 2022 and July 14, 2022.

I find the city's email dated July 14, 2022 refers to Bylaw No. 7551 specifically and requests the Landlord to schedule the "service connection cut and cap implementation witness and verification". I am satisfied on a balance of probabilities that the "single family dwelling/commercial construction permit issuance" in this email refers to the Landlord's application which includes both demolition and building permits.

Furthermore, I accept the Landlord's testimony that his builder was already aware of the city's pre-condition for issuing demolition permits from previous projects. I find this testimony is supported by the city's email dated May 20, 2022 regarding a different project.

I find that while section 1.3 of Bylaw No. 7551 and the city's application form do not explicitly refer to the impact on permit issuance, I find the city's emails, when read together with the other documents, show that the city makes this inspection a pre-condition for issuing demolition permits. I find the Bylaw section's emphasis on a property owner's obligations and possible penalties to not be inconsistent with the approach taken by the city.

Based on the foregoing, I am satisfied that the Landlord is unable obtain a demolition permit (and the associated building permit which he has applied for in the same application) because the Tenants are still residing in the rental property and the service leads cannot be cut.

I conclude the Landlord has met his onus to establish good faith and that he has completed all possible steps prior to issuing the Four Month Notice. I am satisfied that it is necessary to end the tenancy first so that the service connection cut and cap implementation inspection can be performed, and the demolition permit can then be issued to the Landlord.

Accordingly, the Tenants' claim to dispute the Four Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

> 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.

Having found the Four Month Notice to comply with the requirements of section 52 and having dismissed the Tenants' application, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession states:

> **B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION**
> 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 two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.
>
> While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:
>
> - 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 two days to vacate the unit.
> - If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
>   - e.g., If the tenant provides evidence of a disability or a chronic health condition.
>
> An arbitrator may 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.
>
> 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.

In this case, I find the Tenants have a young child and are expecting, so they will require more time than the usual two days to vacate the rental unit. I accept the Landlord's testimony that the latest date he can agree to is December 15, 2022, since he has already re-scheduled the sanitary services capping and inspection for mid-December 2022. I note the Tenants have been aware of the Landlord's plan for demolishing the rental unit since June 2022. As such, I find it is appropriate to extend the effective date of the Four Month Notice to December 15, 2022.

Pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession effective 1:00 pm on December 15, 2022.

I note that pursuant to section 51(1) of the Act, the Tenants are entitled to receive compensation from the Landlord equal to one month's rent. If the Landlord has not yet compensated the Tenants for this amount, arrangements should be made to do so prior to December 15, 2022.

3. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?

Section 62(2) of the Act states that the director "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies".

The Tenants stated in their application that they want the Landlord to comply with the Act, the regulations, and tenancy agreement as follows:

> *Since the property was purchased the agent for new landlord has shown up unannounced to discuss when we will be moving the sellers agent and property manager have called us numerous times to ask when we will be moving out until we asked them to stop contacting us the conversation was moved to email where the new landlord's agent was requesting to end the tenancy agreement early with a buyout we believe that the landlord is not acting in "good faith"*

Based on the evidence before me, I do not find the Landlord or his agents to have breached the Act, the regulations, or the tenancy agreement.

As already discussed, good faith means "a landlord is acting honestly, and they intend to do what they say they are going to do" (Policy Guideline 2B). I do not find the Landlord's offer to give the Tenants additional compensation, if the Tenants agreed to move out earlier, to necessarily be a sign of bad faith. I am satisfied based on the evidence presented that the Landlord intends to do what he says he is going to do—that is, demolish the rental unit and build a new house. As mentioned above, I do not find the Landlord to have any ulterior motive or improper purpose in issuing the Four Month Notice.

Accordingly, I dismiss the Tenants' claim under this part without leave to re-apply.

4. Are the Tenants entitled to recover the filing fee?

The Tenants have not been successful in this application. I decline to award the Tenants recovery of the filing fee under section 72(1) of the Act.

Conclusion

The Tenants' application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on December 15, 2022**. The Tenants must be served with this Order as soon as possible. Should the Tenants 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 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 21, 2022

Residential Tenancy Branch