Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL-4M**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (Application) made by the Tenant under the *Residential Tenancy Act* (Act). The Tenant seeks:

- an order to cancel a Two Month Notice to End Tenancy for Demolition, or Conversion to Another Use dated February 27, 2023 (4 Month Notice) pursuant to section 49.

The Landlord and Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (RoP). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by registered mail on March 24, 2023. The Tenant provided the Canada Post tracking number for service of the NDRP on the Landlord. The Landlord stated he received the NDRP. As such, I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Landlord stated he did not serve any evidence on the Tenant for these proceedings.

Preliminary Matter – Service of Tenant's Evidence on Landlord

The Tenant submitted into evidence a copy of the tenancy agreement between the Tenant and Landlord and a copy of the 4 Month Notice. The Tenant stated she did not serve copies of these documents on the Landlord. Pursuant to Rule 3.3 of the RoP, a party is required to proof that they have served their evidence on the respondent. I find the Tenant did not serve the Landlord with the evidence submitted by the Tenant to the Residential Tenancy Branch. However, in this case, the Landlord already has copies of the tenancy agreement and 4 Month Notice. As I require copies of the tenancy agreement and 4 Month Notice to adjudicate the Application, I will admit the Tenant's evidence for this proceeding.

Preliminary Matter – Removal of Applicant from Application

At the outset of the hearing, I noted that one of the two applicants named in the Application was not named as a tenant in the tenancy agreement. The Tenant admitted the second applicant is her son who is 14 years old. The parties confirmed there has not been an amendment to the tenancy agreement to add the Tenant's son as a tenant. The Tenant made a request that I amend the Application to remove her son as an applicant. Rule 4.2 of the RoP states:

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
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> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the Landlord could have reasonably anticipated the Tenant would request the Application be amended to remove the Tenant's son as an applicant. As such, pursuant to Rule 4.2 of the RoP, I order the Application be amended to remove the Tenant's son as an applicant.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 4 Month Notice?
- If the 4 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

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

The Tenant submitted into evidence a copy of the signed tenancy agreement, dated November 19, 2020, between the Landlord and Tenant. The parties agreed the tenancy commenced on November 19, 2022, on a month-to-month basis, with rent of $1,250.00 payable on the first day of each month. The Tenant was required to pay a security deposit of $625.00 and a pet damage deposit of $625.00 by November 17, 2020. The Landlord stated the Tenant paid the security and pet damage deposits and that he was holding them in trust for the Tenant. The Landlord stated the rent was paid by the Tenant for June 2023. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 4 Month Notice. The 4 Month Notice states the reason for ending the tenancy is because the Landlord is going to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property. The Landlord stated the 4 Month Notice was served in the Tenant's mailbox on February 28, 2023. The Tenant acknowledged she received the 4 Month Notice. As such, I find the 4 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The Landlord stated he owns 7 lots in in the area, including the lot (Lot) on which the rental unit is situate. The Landlord the Lot is a corner lot. The Landlord stated the Lot is contiguous one side to another lot (Adjacent Lot) he owns and that the other side is contiguous to a lot on which he holds an option to purchase.

The Landlord stated he employs a manager (Manager) to oversee all the lots he owns. The Landlord stated he did not require any permit or approvals from the City in which the rental unit is located as there would be no renovations or changes to the rental unit

that would otherwise require permits. The Landlord stated he was acting in good faith at the time he served the 4 Month Notice on the Tenant and that he will be using the rental unit for the purpose stated in the 4 Month Notice, namely for accommodations for the Manager.

The Tenant stated the Landlord has not spoken to her about his plans for the rental unit. The Tenant stated she believes the Manager is already living in another residence nearby to the rental unit and that the Landlord does not need the rental unit to house the Manager. The Tenant stated that Landlord owned another vacant house at the end of the same street on which the rental unit is located and that the Landlord should use that property to house the Manager rather than the rental unit. The Tenant admitted the Landlord owns the Adjacent Lot.

The Landlord stated the Manager is currently living in building on one of the other lots he owns. The Landlord stated that, although building occupies the building identified by the Tenant, it is also occupied by foreign exchange students, all of whom are men. The Landlord stated the Manager's wife has completed university and will be returning to live with her husband. The Landlord stated the Manager's wife does not feel comfortable living in an all mail male occupied house where the Manager is currently living. The Landlord stated the Manager, and his wife, are the persons who would occupy the rental unit after the Tenant has vacated it. The Landlord stated the other residence that he owns that the Tenant referred is slated for demolition and the water and sewer services have been disconnected from that house. The Landlord stated that, as a result the house has no water or sewer service, the empty house is not suitable for occupation by the Manager.

Analysis

Section 1 of the Act defines residential property as:

> **"residential property"** means
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> (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
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> (b) *the parcel or parcels on which the building, related group of buildings or common areas are located,*
>
> (c) the rental unit and common areas, and
>
> (d) any other structure located on the parcel or parcels;

Section 49(6), 46(7), 49(8) and 55(1) of the Act state:

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:*

(a) demolish the rental unit;

(b) [Repealed 2021-1-13.]

(c) convert the residential property to strata lots under the *Strata Property Act*;

(d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

(e) *convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) *a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*

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.*

[emphasis in italics added]

The 4 Month Notice was served in the Tenant's mailbox on February 28, 2023. Pursuant to section 49(8)(a) of the Act, the Tenant had 30 days to dispute the 4 Month Notice, being March 30, 2023. The records of the Residential Tenancy Branch disclose the Tenant filed her application for dispute resolution to dispute the 2 Month Notice on March 20, 2023. As such, I find the Tenant made her application to dispute the 4 Month Notice within the 30-day dispute period required by section 49(8)(b) of the Act.

Residential Tenancy Policy Guideline# 2A (PG 2A) addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

> 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.
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> *"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.*

The Landlord stated he owns 7 lots in the vicinity of the rental unit including the Lot and Adjacent Lot. The Landlord stated the Lot and Adjacent Lot are contiguous to each other. The Landlord stated he employs the Manager who oversees all the lots he owns. The Landlord stated he does not require any permit or approvals from the City in which the rental unit is located.

The Landlord stated the Manager is currently living in a building on one of the other lots which is also occupied by foreign exchange students, all of whom are men. The Landlord stated the Manager's wife has completed university and will be returning to live with her husband. The Landlord stated the Manager's wife does not feel comfortable living in the house where the Manager is currently living. The Landlord stated the Manager, and his wife, are the persons who would occupy the rental unit after the Tenant has vacated it. The Landlord stated the other residence he owns that the Tenant

referred is slated for demolition and the water and sewer services have been disconnected. The Landlord stated that, as that the empty house does not have any water or sewer services, it is not suitable for occupation by the Manager. The Landlord stated he was acting in good faith at the time he served the 4 Month Notice on the Tenant and that he will be using the rental unit for the purpose stated in the 4 Month Notice, namely for accommodations for the Manager and Manager's wife.

Based on the undisputed testimony of the Landlord, I find the Lot and Adjacent Lot are contiguous to each other, are both owned by the Landlord and, therefore, are related to each other by common ownership by the Landlord. As such, I find the two lots are a "residential property" because there are two adjacent parcels on which a related group of buildings owned by the Landlord are located. As such, the Manager, who will occupy the rental unit, will manager the Adjacent Lot, as well as the other lots owns by the Landlord.

Based on the foregoing, I find the Landlord has provided sufficient testimony to prove, on a balance of probabilities, that there are grounds to end the tenancy on the basis the Landlord intends in good faith to convert the renal unit for use by a caretaker, manager or superintendent of the residential property pursuant to section 49(6)(e) of the Act. As such, I dismiss the Application.

I have reviewed the 2 Month Notice and find it complies with the form and content requirements of section 52. As such, the provisions of section 49(7) of the Act have been met. The Tenant has paid the rent for June 2023. As I have dismissed the Application and, pursuant to section 55(1), I must grant the Landlord an Order of Possession. Based on the foregoing, I grant the Landlord an Order of Possession effective at 1:00 pm on June 30, 2022.

I note that the Landlord is required to pay the Tenant compensation, equal to one months' rent, pursuant to section 51(1) of the Act.

Conclusion

The Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective at 1:00 pm on June 30, 2022. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. If the Tenant fails 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: June 7, 2023

Residential Tenancy Branch