Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding TAYLAN HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on May 22, 2023. The Tenant applied for an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, dated April 25, 2023 (the Four Month Notice), pursuant to the Residential Tenancy Act (the Act).

At the beginning of the hearing, it was noted by LM that JC is not a tenant named under the tenancy agreement submitted into evidence. Accordingly, pursuant to section 64(3), and with the agreement of the parties, I amend the application to remove JC as a party. RC is referred to in the singular as the Tenant throughout the Decision.

The Tenant attended the hearing and was accompanied by JC, an occupant in the rental unit. The Landlord was represented at the hearing by LM and BG, agents. Also in attendance as a witness for the Landlord was BG. All in attendance provided affirmed testimony.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on April 25, 2023. LM confirmed receipt on behalf of the Landlord.

The Landlord submitted documentary evidence in response to the application. LM testified it was served on each of the Tenants by registered mail on August 26, 2023. JC confirmed receipt on behalf of the Landlord.

No issues were raised with respect to service and receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure and to which I was referred; however, I refer to only the relevant facts and issues in this Decision.

Issue

Is the Tenant entitled to an order cancelling the Four Month Notice?

Background and Evidence

The parties agreed the tenancy began on February 1, 2015. Currently, rent of $1,138.00 per month is due on the first day of each month. The Tenants paid a security deposit of $487.50, which the Landlord holds.

The Landlord issued the Four Month Notice, which was received by the Tenants on April 25, 2023. The Four Month Notice was issued on the basis that the Landlord intends to provide the unit to a resident manager. LM testified that the Landlord decided that the rental property needs a resident manager to deal more effectively with issues such as snow removal and sidewalks. LM also testified that the rental unit has a good view of the rental property.

In addition, LM testified that BG applied for the position and was accepted, with an anticipated move-in date of September 1, 2023. LM testified this was entirely a business decision. In support, the Landlord submitted the following documents into evidence:

- an offer of employment letter to BG dated June 5, 2023;
- a job description; and
- a tenancy agreement between the Landlord and BG, dated July 30, 2023.

BG also testified that he accepted the employment and currently commutes from a nearby community. He intends to move into the rental unit as soon as it is available.

On behalf of the Tenant, JC submitted that the Four Month Notice was deficient. JC stated that Policy Guideline #2B states:

> When ending a tenancy under section 49(6) of the RTA…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.
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> …
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> If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

In this case, JC submitted that the Four Month Notice does not indicate that permits are not required, and the Landlord's evidence does not include a report from a municipal or provincial authority, or from a qualified engineer or tradesperson, stating that permits are not required.

On behalf of the Tenant, JC also alleged there was another unit more suited to the intended use available. JC also submitted that the Landlord bears the onus of proving that the plan requires the tenancy to end. In response, LM testified that the other unit was not available at the time the Four Month Notice was issued.

Further, JC stated that the rental unit is in a very high traffic area with a lack of privacy and is not suitable for business purposes. In response, LM disagreed with the Tenant's submission.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6)(e) of the Act confirms 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Policy Guideline #2B confirms that good faith means that a landlord is acting honestly and intends to do what they say they are going to do.

In this case, LM testified, and I accept, that the rental unit will be used to accommodate a resident manager. This was supported by an employment offer letter, a tenancy agreement, and the affirmed testimony of BG, the resident manager who intends to occupy the renal unit.

Further, I note that the Tenant did not dispute that the Landlord intends to have a resident manager occupy the rental unit. Rather, relying on Policy Guideline #2B, the Tenant merely submits that the Landlord's failure to check a box on the Four Month Notice and provide evidence that permits are not required is fatal to the effectiveness of the Four Month Notice. The Tenant also suggested that a different unit is available to the Landlord and that the rental unit is not ideal for use by a resident manager.

Considering the above, I decline to follow Policy Guideline #2B to the letter. In *Li v. Kirk*, 2023 BCSC 83, Justice Hughes states the following with respect to Residential Tenancy Branch policy guidelines, at para. 78:

> The RTB's policy guidelines are issued to assist members of the public and to guide arbitrators as to the criteria to be used in the decision-making process; they are not law and they are not binding…

In this case, I find there is strong evidence that the rental unit will be occupied by BG, the resident manager. I find it is obvious that a mere change in occupant – unlike a demolition, renovation, or repair – does not require any permits to be issued. In the case where the use of the rental unit continues to be residential, it would be unnecessarily cumbersome to require the production of a statement from a municipal or provincial

authority, or from an engineer or tradesperson, with respect to the need for a permit. Changes in the occupancy of a rental units are a routine and frequent occurrence in British Columbia.

With respect to the Tenant's suggestion that another unit is available and the current unit is not suited to the intended business purpose, I disagree that these are necessary considerations for a landlord when determining how best to use the rental property.

Considering the above, I accept that the Landlord intends to do what was stated in the Four Month Notice as the reason for ending the tenancy. This was supported by strong documentary evidence and oral testimony. I do not accept that failure to check a box on a form or to provide statements from governmental authorities or tradesperson is fatal to the Four Month Notice. Similarly, I find that the availability of other units and the tenant's opinion with respect to the use of the rental unit are necessary considerations for a landlord. Therefore, I find that the Tenant's application is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55 of the Act requires that I grant an order of possession to the landlord. Having reviewed the Four Month Notice, I find it complies with section 52 of the Act. Accordingly, I find the Landlord is entitled to an order of possession. As the effective date of the Four Month Notice has passed, I find the order will be effective two days after it is served on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the Act, the Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 11, 2023

Residential Tenancy Branch