

SPECIFIC USE NOT REQUIRED

Court of Appeal Upholds Metro Vancouver's Notice to End Tenancy Following a Change From "Residential Use" to "Non-Residential Use"

BACKGROUND

The Metro Vancouver Regional District ("**Metro Vancouver**") is the owner of the Belcarra Regional Park located in Belcarra and Port Moody. Metro Vancouver leases a portion of park, including seven cabins and other structures (the "**Premises**") to the Belcarra South Preservation Society (the "**Tenant**"). The cabins are used for residential purposes, with most of the residents being directors of the Society. The lease between Metro Vancouver and the Tenant is a one-year fixed term tenancy that began on March 1, 2006 and converted to a month-to-month tenancy on March 1, 2007.

At a meeting on November 24, 2017 the board of Metro Vancouver approved a plan to convert the Premises from a "restricted access residential use" to a "non-residential public use". On March 14, 2018 Metro Vancouver issued a notice to end tenancy for landlord's use of property (the "**Notice**") under section 49(6)(f) of the BC

Residential Tenancy Act (the "**RTA**"). Section 49(6)(f) provides the following:

"(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:

...

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

The Tenant sought to have the Notice cancelled and applied for dispute resolution at the Residential Tenancy Branch.

RESIDENTIAL TENANCY BRANCH

The Arbitrator at the Residential Tenancy Branch concluded that Metro Vancouver had not met the requirements to issue the Notice as set out in

(Continued on page 2)

section 49(6)(f) of the *RTA* for two reasons.¹ First, they found that Metro Vancouver had not established a good faith intention to convert one of cabins (“**Cabin 1**”) to a non-residential use, on the basis that at the November 24, 2017 meeting the board of Metro Vancouver had directed staff to “investigate options for Cabin 1, and report back to the...board” and stated that “the future of Cabin 1 requires future review and discussion with the Village [of Belcarra]”.

Second, the Arbitrator found Metro Vancouver had not obtained all of the necessary permits to convert the remaining cabins (“**Cabins 2 to 7**”) from residential accommodations to their new intended use, interpretive landscape displays. This was based on evidence suggesting Cabins 2 to 7 required stabilization work to turn them into interpretive landscape displays and that Metro Vancouver had not obtained the required heritage alteration permits. There was no dispute that the relevant municipal authorities did not require any permits or approvals to allow the use of the Premises, including Cabins 2 to 7, to change to non-residential.

The Arbitrator cancelled the Notice and ordered that the tenancy continue until ended in accordance with the *RTA*.

BC SUPREME COURT

Metro Vancouver petitioned for a judicial review of the Arbitrator’s decision in the BC Supreme Court. The appropriate standard of review for an arbitrator’s decision under the *RTA* was not at issue. Questions of fact, law and discretion are

only open to review if such decisions are patently unreasonable. Metro Vancouver argued that both bases of the Arbitrator’s decision were patently unreasonable and the decision should be set aside.

The chambers judge agreed with Metro Vancouver. It found the Arbitrator’s first conclusion to be patently unreasonable as there was no evidence to support the finding that Cabin 1 was not intended to be converted to a non-residential use. The judge explained that while the specific public use for Cabin 1 was not determined at the time the Notice was given, the use of the Premises as a whole was changed to a non-residential public use. As such, any use to which Cabin 1 could be put could only be a public use.

For an arbitrator’s decision under the RTA questions of fact, law and discretion are only open to review if such decisions are patently unreasonable.

The chambers judge also found the Arbitrator’s second conclusion to be patently unreasonable. The chambers judge explained when a change of use is established as a basis to terminate a tenancy, only permits and approvals associated with the change in use are required. Here, there was no dispute that no permits or approvals were required to change the use of the Premises to non-residential. Permits which may be required for changes to certain structures following a change in use are not required. The chambers judge stated

the Arbitrator incorrectly focused on the future plans for Cabins 2 to 7 in reaching their second conclusion.

The chambers judge allowed the petition, set aside the Arbitrator's decision to cancel the Notice and remitted the matter back to the Residential Tenancy Branch for reconsideration.

BC COURT OF APPEAL

The Tenant unsuccessfully appealed the chambers judge's ruling in the BC Court of Appeal. In relation to the Arbitrator's first conclusion, the Court of Appeal agreed with the chambers judge, emphasizing that Metro Vancouver clearly resolved at its November 24, 2017 meeting to convert the Premises, including Cabin 1, to a "non-residential use" within the meaning of section 49(6)(f) of the *RTA*.

In relation to the Arbitrator's second conclusion, the Court of Appeal again agreed with the chambers judge. The Court of Appeal gave the analogy of a landlord who sought to convert a residential building with multiple rental units into a commercial space. To comply with section 49(6)(f) of the *RTA*, that landlord would have to establish it intended the conversion in good faith and that it had in place the necessary permits or approvals to convert the building to commercial use. The landlord would not however, be required to establish that it had in place those further specific permits or approvals that might be required to convert each former rental unit to, for example, an office, or a restaurant, or a fitness centre.

The Court of Appeal dismissed the appeal and confirmed the chambers judge's order setting aside the Arbitrator's decision and remitting the matter back to the Residential Tenancy Branch for reconsideration.

TAKEAWAY

While Metro Vancouver was successful at both the BC Supreme Court and BC Court of Appeal, this case shows the importance for landlords in residential leases to carefully consider what will happen at the end of the initial fixed term of a tenancy. Since the lease between Metro Vancouver and the Tenant converted to a month-to-month tenancy after the initial one-year fixed term, Metro Vancouver was required to end the tenancy in accordance with the *RTA*.

Following changes made to the *RTA* and the regulations in December of 2017, this situation can only be avoided in certain circumstances. A tenant can only be required to vacate a rental unit at the end of a fixed term tenancy if the landlord is an individual and that landlord or a close family member of that landlord plans in good faith to occupy the rental unit. Otherwise, the lease will automatically convert to a month-to-month tenancy and must be ended in accordance with the *RTA*.

October, 2021
Nicholas Krishan



NICHOLAS KRISHAN

604.358.7443

NICHOLAS@CIVICLEGAL.CA

Nicholas is an associate lawyer at Civic Legal LLP. He maintains a general municipal law practice with a focus on construction procurement, land development, and privacy law.

Nicholas articulated at Civic Legal LLP and was called to the Bar in July 2020. He completed his J.D. from the Peter A. Allard School of Law at the University of British Columbia. During law school, he served as the Director of Operations for the Law Students' Legal Advice Program, where he organized with community leaders to provide legal services to low-income individuals. Nicholas also volunteered with Pro Bono Students Canada and Legal Education Outreach and has completed the Business Law Concentration.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

710 - 900 West Hastings Street, Vancouver, BC V6C 1E5
604.639.3639 | www.civiclegal.ca |  CivicLegal