Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EASTVAN RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with multiple Applications for Dispute Resolution filed by the Tenants seeking to cancel notices to end tenancy pursuant to section 49 of the *Residential Tenancy Act* (the "Act"), and to recover the filing fees paid for each application. This Decision should be read in conjunction with an Interim Decision that was rendered on October 23, 2017 by a different Arbitrator and a Second Interim Decision rendered by me on November 28, 2017.

The Tenants residing in the rental property were issued with a 2 Month Notice to End Tenancy for the Landlord's Use of the Property (the "First Notice") on August 24, 2017. The Tenants were then issued with a Second Notice on September 26, 2017. The Landlord served a Third Notice on October 24, 2017. The reason elected to end the tenancies was that the Landlord has all necessary permits required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental units to be vacant.

The service of the Notices and subsequent applications filed by the Tenants to dispute these Notices were dealt with by me in a hearing which took place on November 24, 2017, during which I amended the Tenants' Application to include the Third Notice.

That hearing heard the Landlord's evidence with respect to the Third Notice during which the Landlord called three witnesses, whose names are detailed on the front page of this Decision. However, the time limit set for that hearing was reached and the matter was adjourned to reconvene on December 11, 2017 for this reason and to allow the Tenants to provide rebuttal evidence for the reconvened hearing.

In addition, several Tenants who had been served notices to end tenancy had since agreed to move out of their respective rental units. Therefore, those Applications were dismissed without leave to re-apply. The remaining Tenants disputing the Third Notice and their respective file numbers are detailed on the front page of this Decision.

Preliminary Issues and Findings

The reconvened hearing was conducted via teleconference. An agent for the Landlord and legal counsel appeared for the Respondent. The Landlord also had a Court Reporter present who made a recording of this hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (the "Rules").

Legal counsel, an advocate, the lead Tenant, and the majority of the named Tenants appeared for the Applicants. The parties are defined and referred to in this Decision as they appear on the front page of

this Decision; individual Tenants and witnesses in this Decision are referred to by their first and last initials.

The parties were informed as to how the dispute resolution hearing would be conducted and no questions about the hearing process were asked. The parties were given a full opportunity to present evidence, make submissions to me, and to cross examine the other party and/or witnesses on the evidence provided.

At the December 11, 2017 reconvened hearing, I dealt with the following preliminary matters. Landlord's counsel confirmed receipt of the Tenants' 75 pages of evidence which had been served for the November 23, 2017 hearing and the 19 pages of written submissions and exhibit rebuttal evidence. Landlords' counsel also confirmed receipt of an additional page of the Tenants' late evidence containing exhibit 9B which was not before me during the hearing as it had been submitted late. However, Landlord's counsel had no objection to this exhibit being admitted into the evidence and I allowed that evidence to be used in the hearing. The Tenants' legal advocate also confirmed receipt of the Court Reporter's transcript relating to the November 23, 2017 hearing.

Landlord's counsel informed that he had provided rebuttal evidence to the Tenants' evidence in the form of an affidavit from the Landlord, some submissions regarding the Tenants' witness evidence and some Facebook documents. The Tenants' legal advocate confirmed receipt of this document even though it was not before me at the time of this hearing. As a result, I allowed the Landlord to rely on this affidavit and asked Landlord's counsel to present it during the hearing.

At the start of the hearing, the Tenants' legal advocate informed me that he wanted to call witnesses to provide expert evidence. However, Landlord's counsel submitted that, apart from one witness, the Tenants had not provided any advance notice of these witnesses pursuant to the Rules and questioned the credentials and the witnesses' ability to give "expert" testimony which would hinder the fairness of the proceedings. Landlord's counsel felt without advance notification of three witnesses being called by the Tenants, the Landlord was being ambushed and not given any advance notice of what evidence was going to be relied upon.

The Tenants' legal advocate pointed to a plumbing and heating invoice in their first evidence package to support the credentials of a plumber who they wanted to call to give evidence as a witness. The Tenants' legal advocate explained that a former tenant was going to give oral testimony and not witness evidence and that they were unable to obtain a statement from the third witness being relied upon. Landlord's counsel then requested that the additional two witnesses who they had not been given prior knowledge of should not be allowed to testify in this hearing as they were not capable of giving expert and independent testimony. In addition, Landlord's counsel had provided Facebook evidence to show the Tenants' legal advocate had a family connection with the Lead Tenant.

On this point, I informed Landlord's counsel that the Rules do not specifically stipulate a mandatory requirement for a party to provide a witness list and accordingly I would not bar the Tenants' witnesses to provide oral evidence in this hearing. However, I agreed with Landlord's counsel's position that the dispute resolution process must be conducted fairly. Therefore, I informed the parties that I would be weighing up and assigning the appropriate evidentiary weight to the witness evidence given and that Landlord's legal counsel could provide further submissions on this in cross examination of the Tenants' witnesses. No further objections were raised with respect to this issue.

Issue(s) to be Decided

- Are the Tenants entitled to have the Third Notice cancelled?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

I have summarized the extensive evidence and submissions provided by the parties during the 444 minute hearing in this Decision. However, a full record of the hearing was made by the Court Reporter whose transcript forms part of this record and should be read in conjunction with this Decision.

The parties confirmed that each tenancy in this dispute is currently alive and operating on a month to month basis and that rent is payable by each of the Tenants on the first day of each month. Each Tenant then confirmed the start date of their tenancy.

The parties took no issues with respect to the form and content of the Third Notice in that it complied with section 52 of the Act. The Landlord also took no issue with respect to the timing of the Tenants' Applications to dispute the Third Notice within the statutory 15 day time limit.

This dispute property comprises of two apartment buildings with separate entrances facing two separate streets and has two individual civic addresses. The buildings are joined by a small bridge which carries services between the buildings on the third floor. The Tenants in this dispute all reside in apartments (the "units") which are located in each of the two buildings, collectively referred to as the Property.

The Landlord was informed that when a tenant is served with a notice to end tenancy for the landlord's use of a property, the landlord bears the burden to prove the reason elected to end tenancy. Therefore, the Landlord was invited to present evidence first which was provided in the November 23, 2017 hearing.

Landlord's Evidence

Landlord's counsel stated that the Landlord intended to rely on written material and submissions provided in their binder of evidence. Landlord's counsel stated that they overwhelmingly meet the requirement of the Act to prove the Third Notice and that the construction financing obtained by the Landlord contemplates substantial renovation that is to be performed on the Property.

Landlord's counsel stated that the Tenants have taken an expansive view of the good faith requirement by questioning what is to happen after the renovations are achieved and the Tenants suggest the Third Notice is a ruse to jack up rent. Landlord's counsel explained that the Tenants have been offered a deeply discounted rent and the right to first refusal to rent back their units at that discounted rent. However, even though this was not accepted by the remaining Tenants, this is evidence that the Landlord has no bad faith.

For the matter of the renovations required to have vacant possession, Landlord's counsel submitted that the evidence with respect to the scope of work required will render the buildings a construction zone which will not be safe for occupancy by any of the remaining Tenants. Landlord's counsel also highlighted the old age of the buildings and that they contain lead and asbestos which would require vacancy.

Landlord's counsel then called three witnesses who provided affirmed testimony under direct examination. The Tenants' counsel and legal advocate were given an opportunity to cross examine all four witnesses during the November 23, 2017 hearing.

The first witness, RG, identified himself as a licensed and certified environmental consultant and testified that he has eight years of experience dealing with 40 to 50 apartment buildings doing hazmat inspections.

Landlord's counsel referenced a report provided by RG in which he had conducted a site visit of the Property on October 26, 2017. RG testified that he conducted a visual preliminary inspection survey in which he identified the heater, located in the boiler room of the basement spanning the buildings, had aerosol asbestos wrap around it.

RG testified that as the building is over 100 years old, there will be multiple surfaces containing asbestos materials, such as: plaster; drywall; vinyl and tile flooring; window putty; stucco finishing; insulation; roof tarring; and gravel. RG testified that these hazardous materials would also be present in the units because any buildings constructed before 1990 have been found to always contain some asbestos.

RG explained that he was unable to perform invasive testing for asbestos as the building was currently occupied and the destructive process of examining asbestos would likely result in cross contamination to people and their possessions. RG stated that it has to be removed safely in accordance with the safety legislation.

RG testified that asbestos removal involved encapsulating the building and setting up containment zones so that asbestos can be safely removed by hazmat teams. RG explained that it was not possible to do this while the building was being occupied or being worked on by other trades. This was because if common areas were closed off for abatement, there would be no access in or out of the buildings while this was taking place.

RG was asked by Landlord's counsel why the hazardous material could not be abated one unit at a time while the other units were occupied. RG responded stating that the scope of work that was provided for these renovations does not allow for each unit to be individually abated because the electrical and the plumbing will have to be turned off. RG confirmed that no construction activity can take place until the abatement has been completed which was a city and WorkSafeBC requirement. RG testified that it would take approximately eight weeks to complete the abatement process.

Landlord's counsel asked RG why the buildings could not be renovated separately. RG replied stating that the project would involve disconnecting plumbing, heating and gas to the building and dealing with an unknown amount of asbestos. RG testified that it was not practical to have anyone residing in these conditions and it was not possible to set up a decontamination unit on every single unit without blocking off all the other units.

Tenants' counsel then cross examined RG and asked about the timing of asbestos abatement of eight weeks versus the projected total time frame of one year in the Landlord's materials to undertake the renovations. RG replied stating that the eight week period was limited to the asbestos work and did not include any other planned renovation work.

Tenants' counsel asked RG to confirm his testimony and clarify why one building could not be renovated while work was being done on the other. RG testified that once work of this scope starts, containment areas around all the buildings have to be set up which is not practical because the work is done in phases. In addition, during this time the power and water has to be cut off.

The Tenants' legal advocate confirmed that the boiler is located in the basement of one of the buildings and that it serves both buildings. RG explained that once work would start to the boiler, there would be no heat to the buildings and both buildings would be deemed as work zones; therefore, the risk of exposure would be too high.

Landlord's counsel called their second witness, RM, who is the construction manager for the planned renovations overseeing all the trades and is the author of the scope of work that was provided into evidence by the Landlord. RM went over his 17 years of experience in carpentry and his credentials in construction management.

Landlord's counsel asked RM in direct examination whether he had all the necessary permits to complete the intended tasks in the scope of work agreement which the witness confirmed he did. These were provided into evidence and comprise of electrical and plumbing permits.

RM testified that the roof is around 15-20 years in age and is in disrepair and the electrical wiring is probably 60, 70 or 80 years old and is rubber tube wiring which is dangerous as it poses a fire hazard. Therefore, it will require a full rewire.
RM testified that the building finishes resembled a medical office dating back to the 1940s. RM went through a list of sub trades he planned to hire to undertake the scope of work and confirmed that no sub trade could start work until hazardous substances have been safely removed.

RM testified that they would have to: take apart all the walls and drywall to install all new wiring; shut off the gas to run new gas lines as the current ones were old and residual gas indicated slight leaks; and full vapour barriers and insulation had to be put on the exterior walls.

RM then explained the requirement to have proper fire suppression in the walls of adjoining units to meet the city requirements. RM testified that when drywall is being removed in a rental unit, this exposes the adjoining rental unit to fire which would rip through the building a lot quicker than normal, especially in an environment where heavy equipment can cause sparks.

RM then explained that in his opinion the fire escape stairs for the Property were not safe as they were falling apart and this would have to be one of the main priorities when the work is undertaken. RM testified that when one fire escape is removed, it would only allow for one other fire escape which would lessen the chance of people getting out in the event of a fire.

RM then was pointed by Landlord's counsel to a letter he had submitted into evidence requesting the Property be vacant for the proposed work. RM confirmed that he did not feel comfortable doing the work with people living there because of the risks posed by: fire; exposure to hazardous materials; and people entering into prohibited construction zones.

Landlord's counsel asked RM why the work could not be done to each unit one at a time. RM replied that the gas, water, and power have to be shut down for multiple days and weeks at a time for the work to be

done which all has to be coordinated with wait times in between for inspectors to do their necessary checks and approvals.

RM testified that the construction work will also generate loud noises throughout the day and create dust and debris. RM explained that each day the dust and debris will have to be cleaned up and this creates further dust which only the workers would be protected from. RM also explained that electrical wiring will be exposed for long periods of time while waiting for inspections to be done.

Landlord's counsel asked RM why the proposed work could not be done without requiring vacant possession. RM testified that buildings which undergo renovations while being occupied involve cosmetic repairs such as painting, but in this case, the work involved requires tearing apart fire systems and putting in new fire walls which would leave walls open for long periods of time while waiting for inspections and approvals. RM confirmed that the estimated time set out in his evidence to complete the renovations was one year.

Landlord's counsel then called the third witness, CA, who was a mechanical engineering technologist with 17 years of experience and has a diploma in engineering technology. CA testified that he has been involved with 20 projects that are similar to the one being planned by the Landlord in this case, and that he had been hired by the Landlord to undertake the water re-pipe design for the plumbers.

CA testified that he had proposed a new heating system that involved installing high efficiency boilers in each unit that would eliminate the existing central boiler system which ran on a supply and return loop. CA testified that the pipes were believed to be the original piping and that the boiler system was nearing the end of its life because the old piping system was diminishing the boiler life expectancy. CA testified that his drawings were used to pull the permit from the city. CA then referenced his letter dated November 1, 2017, which was provided by the Landlord into evidence, that the building should be vacant for the planned renovations. CA explained that the reason for this was because walls would have to be opened to replace fixtures which will be more extensive than a standard re-pipe.

CA testified that some plumbers lay a new piping system beside the existing one and connect it at the end during the switchover. CA explained that the walls would need to be opened to see if this could be done but guessed that the space in the walls would be too tight to do this. CA testified that it would take between one to two weeks to re-pipe a stack of units each time and explained that the water could not be shut off for individual units but would rather have to be shut off all together.

CA confirmed that he recommended vacant possession due to the extent of demolition work required and that it would be difficult to regulate the movement of construction workers which would likely need a safety officer in every unit undergoing construction if it were to be occupied. CA testified that this would create a problem in terms of scheduling, man power, logistics and causing noise disturbance.

CA testified that the entire heating loop has to be drained and then the baseboard heaters in each rental unit have to be decommissioned from the main loop which then has to be tied into the new boiler system. CA explained that new piping has to be laid and gas piping has to be commissioned. CA stated that there is no guarantee of being able to drain one unit at a time as the whole building would be without heat. CA further explained that each unit will have its own cold water source which will be heated by individual boilers installed in each unit.

Landlord's legal counsel then asked the Landlord's agent questions. The Landlord's agent testified that he had been in the construction business for 15 years doing renovations on low rise apartment buildings. The Landlord's agent confirmed that the company Landlord is the beneficial owner since late August 2017 and before the Property was purchased the Landlord had commissioned an inspection of the building by an engineering firm. This report was provided into evidence by the Landlord.

The Landlord's agent explained that he had the report commissioned because he wanted to get a professional opinion on the building. The Landlord's agent testified that the buildings contained a total of 22 units which essentially operated as one Property due to the fact that hot water, heating, sewer and the drainage system is shared between the two buildings.

The Landlord's agent then referred to a financial document in the Landlord's evidence stating that this was evidence that mortgage financing for the building was only obtainable based on the construction costs that had been provided and proposed. The Landlord's agent confirmed that the financing company does not require the Property to be vacated but does require the Landlord to undertake the renovations.

The Landlord's agent then referred to documents showing that the Landlord had difficulty in getting insurance for the coverage for the building. The Landlord's agent testified that most companies had declined, likely in this opinion due to the age and liability of the Property and only one company had agreed to provide coverage.

The Landlord's agent confirmed that he had signed off on the scope of work to be performed on the building. The Landlord's agent was then referred to the building permits the Landlord had provided into evidence and confirmed that they all related to the scope of work which included domestic water re-pipe.

The Landlord's agent then referred to the quotes that had been obtained for tradespeople related to the work that was proposed. The Landlord's agent testified that he had prepared the construction schedule and that it was reasonable and not overstated, and estimated this to take place over the course of one year. The Landlord's agent testified that he is working on another similar project which does not involve a re-pipe and that project has taken a year to complete.

The Landlord's agent testified that the Landlord needs vacant possession as the Tenants would be without power for long periods of time and expressed concern regarding exposure to asbestos during abatement. The Landlord's agent confirmed that he was unable to relocate the Tenants from one building to another because the Property is essentially one building and it would not be possible to shut down the heat and boiler system.

The Landlord's agent testified that the Landlord has a good faith intention because the lines of communication were opened with the Tenants from the moment the Landlord took possession of the Property at the end of August 2017. The Landlord's agent stated that the Tenants had been offered two months of free rent, rather than the one month required by the Act; in addition, the Tenants had been offered an extended period of stay if they had difficulty finding a new residence and that they were offered a 25% discount on the average rent that will be established for the units after the renovations have taken place. The Landlord's agent confirmed that only a few Tenants accepted the offer that was made.

Legal counsel confirmed that even though the vacancy date on the Third Notice is December 2017, the Landlord was willing to extend this to January 31, 2018 if this Decision goes in their favour.

Landlord's legal counsel stated that in addition to the witnesses provided for this hearing, he was also relying on his documentary evidence provided for this hearing and his closing arguments detailed below. In the documentary evidence, the Landlord's counsel submits that the Landlord meets the requirements of the Act because the Landlord had to promise to a substantial renovation of the Property in order to secure the mortgage financing.

The Landlord submits that they have the necessary permits and have retained numerous contractors to carry out the renovation and therefore the good faith of the Landlord cannot be questioned.

The Landlord submits that the building was constructed in 1912 and has not undergone any substantial renovation and is now suffering from significant deferred maintenance issues which the Landlord references in the engineering report provided into evidence. This report contains extensive photographic evidence to support the findings.

The Landlord points to the noise issues and hazardous material abatement that will be required which is the reason why the units have to be vacated and the tenancies have to be ended. The Landlord references a commitment letter provided into evidence.

The Landlord provides a detailed construction budget which showed the total renovation cost budget of $7,123, 490. I note that this documents references under the hard costs "If possible, addition of 4 basement units".

Landlord's legal counsel points out that there is no policy guideline published by the Residential Tenancy Branch setting out a test under the notice to end tenancy for this dispute, but such a test is outlined in the Supreme Court of B.C. decision *Berry and Kloet V. British Columbia (Residential Tenancy Act, Arbitrator) 2007 BCSC 257*. This case is herein referred to as the "Berry case".

Landlord's legal counsel submitted this test does not allow for other more expansive arguments to be considered when determining the Third Notice, such as a tenant's financial circumstances or the existence of other legislation such as government bylaws dealing with the relocation of residential tenants.

Landlord's counsel submits that the Landlord must carry out the scope of work because it is obligated to do so as a condition of the mortgage funding. In addition, the Landlord has an obligation under section 32 of the Act to ensure the building complies with health, safety and housing standards required by law that were ignored by the previous landlord. Landlord's counsel states that the useful life of the building elements as defined in Police Guideline 40 has long since been exceeded.

The Landlord references a scope of work which provides for: upgrades to the old knob and tube electrical wiring which will require exposure of the walls; upgraded water piping and plumbing system; installation of a security system; as well as bringing the insulation and sound proofing up to grade; installation of kitchen and bathrooms in each rental unit; removal of all fixtures and walls down to the studs; new sub floors and flooring; and dealing with wood rot in the framing.

The Landlord provided the following permits into evidence from the city: a plumbing permit for the purpose of interior alterations to provide domestic water re-pipe, fire stopping and repairing walls and

ceilings; and an electrical permit to upgrade the electrical panelling and add plugs throughout the Property.

Landlords' counsel submits that the work to be undertaken will not take place over several days but over the course of a year during which time the water and power will be shut down and the Tenants will not be able to be given an alternative.

Tenants' Evidence

The December 11, 2017 hearing heard the Tenants' evidence. The Tenants' legal advocate explained the framework of the Tenants' submissions is established in the Berry case.

The Tenants' legal advocate asserted that in addition, consideration should be given to the case of *Allman v. Amacon Property Management Services Inc., 2006 BCSC 725,* because this case required consideration be given to the use of the rental unit and not the residential property and what is expedient for renovation to a rental property as a whole is not relevant to a determination of whether on a unit-by-unit basis, vacant possession is required.

The Tenants argued that the lack of a work plan submitted into evidence does not allow for a proper analysis of whether vacant possession is needed as only a scope of work has been provided with no timelines.

The Tenants seek to strike down the Third Notice for the following reasons. Firstly, the Tenants contend that the Landlord's building permits provided into evidence do not authorise the full scope of work proposed by the Landlord within their own engineering plan and construction budget.

The Tenants state that several of the items within the Landlord's scope of work require a development permit, which is herein referred to as the DV permit, that would in turn trigger the city's tenant relocation and protection policy which requires the Landlord to provide more compensation than that required by the Third Notice as well the right to first refusal for re-rental.

Secondly, the Tenants argue that the work planned to the Property does not require simultaneous vacant possession and that the work can be done one building at a time. The Tenants are willing to accommodate the planned renovations and therefore, the tenancies do not need to end.
Thirdly, the Tenants assert that the Landlord does not have a good faith intention to undertake the work because this is a reno-eviction scenario in which these low income long term Tenants are being evicted so that the Landlord can re-rent the units to new renters at a higher rate.

The Tenants submitted that the Property is comprised of two separate buildings and is not one entity as submitted by the Landlord. The Tenants submit that each building envelope has its own foundation and electrical system. The only shared service is domestic heat and hot water coming from a boiler system located underneath of the buildings. The Tenants' legal advocate and counsel explained that heat and hot water are supplied to both buildings by a suspended bridge on the third floor linking the buildings together as shown in the Landlord's photographic evidence.

The Tenants' legal advocate stated that the Landlord's witness documents refer only to a vacant building and does not propose that the entire Property is required to be vacant to undertake the renovation work simultaneously.

The Tenants submit that both buildings have independent electricity service because the Landlord's evidence shows that one is located in the basement of one building and the other is located in the main floor of the other building. The Tenants' legal advocate explained that both rooms are configured with the same service before being split between the units. The Tenants proposed that after each unit receives their induvial heater in one building, the work can then transfer over to the other building.

The Tenants submit that the Landlord has not provided evidence of how the work will be carried out relying only on a scope of work and a global estimate of the time this would take. The Tenants state that if the Landlord were to carry out work building by building as suggested, this would allow the tenancies to remain and the Landlord would still stand to gain from the rental revenue and obtain cost surety for work to the subsequent building.

The Tenants' legal advocate submit that the Landlord is required to have a DV permit in order to carry out the work outlined in the engineer's scope of work. This is because the Landlord's construction budget provided into evidence at tab seven contains an item for the addition of four basement units.

The Tenants' legal advocate referred me to a screen capture from the website of the loan company who provided the Landlord with funds for the planned work. The Tenants' legal advocate pointed out that the date of this document was December 1, 2017 and states that the funds are being provided "*to renovate the building and 4 additional units within an 18-month timeline*". No address appears on this document. The Tenants' legal advocate therefore infers that this document refers to the Property and confirms the addition of basement units at the Property is part of the scope of work.

The Tenants' legal advocated pointed me to a document to show the rental Property is zoned as RM 4 and that the addition of units to a Property in such a zoning area renders the Property a multiple conversion dwelling pursuant to a definition from a document provided into evidence titled "Heritage Action Plan Document".

The Tenants' legal advocate explained that the city zoning document which they provided into evidence states that a multiple conversion dwelling is a conditional use. From this the Tenant's legal advocate stated that the permitting guidelines on the city website, shown at Exhibit 2B, require a DV permit which the Landlord has not obtained.

I asked Tenants' legal advocate whether the Tenants had approached the city with their complaints regarding the lack of the Landlord's permits. Tenants' legal advocate stated that in the Landlord's agent's affidavit he claims to have approached the city about requiring a DV permit but he only addressed the issue of the stairway treads and not the replacement of the stairwells which is clearly outlined as a requirement in the Landlord's engineering report.

The Lead Tenant testified that he had contacted the city permit telephone line twice and was informed by two different city officials that the exterior stairwells would require a combined building DV permit, and the addition of units would require a full DV permit.

The Tenants' legal advocate stated that the city can only assess the work that is put before them so if someone approaches them with a project that is not the full scope of work they are not going to be able to assess it properly.

In addition, the Tenants' legal advocate pointed me to a city authored document titled "Tenant Relocation and Protection Policy" which I now refer to as the TRP policy. This is a strategy based document for housing and homelessness. I was then referred to page 9, Section 2.2 which states:

> *"In cases where tenants will not be permanently displaced as a result of rezoning or development, applicants will be requested to provide a Tenant Impact Statement. A Tenant Impact Statement will be notarised and include a detailed declaration that tenancies will not be impacted as a result of the proposed work. If the scope of work changes at any time and permanent displacement of tenants becomes necessary, applicants will be requested to provide a permanent tenant relocation plan as described in Section 2.1"*
>
> [Reproduced as written]

I note that Section 2.1 requires applicants seeking a rezoning or development permit to provide a Tenant Relocation Plan where tenants in existing residential rental housing units will be displaced.

The Tenants' advocate submits that as the Landlord is requiring vacant possession of the Property, the Landlord has a duty to provide a notarised Tenant Impact Statement, which is not in evidence, and to comply with the TRP policy. The Tenant's counsel asserted that the Landlord is disingenuously attempting to evict the Tenants with cheap and less substantial permits simply to avoid and bypass the requirement to have a DV permit. This is because the Landlord wants to avoid additional compensation which would be payable to the Tenants under the Tenant Relocation Plan, amongst other relief owed to the Tenants.

The Tenants submit the Landlord also requires a DV permit for changing of the exterior stairwells which would be considered an exterior alteration and another reason why the Landlord should have a DV permit. The Tenants' legal advocate pointed to the engineer's report provided in the Landlord's evidence which states "Immediate reconstruction of all exterior decks and stairwells" which is estimated at a cost of $140, 000.00. The Tenants' legal advocate stated that the city's development permit webpage shows that all additions and exterior alterations require a development permit which in turn triggers the Tenant Relocation Plan.

The Tenants' legal advocate submits that the Tenants do not contest the requirement for the rental units to be vacated but have offered to accommodate the Landlord if the Landlord does repairs to the both buildings separately. Therefore, there is no need for the tenancies to end as was decided in the Berry case. The Tenants submit that the Landlord failed to show how both buildings would need to be vacant at the same time and that the Tenants' willingness to accommodate the Landlord shows the tenancies do not need to end.

The Tenants submit a Residential Tenancy Branch decision dated November 6, 2015 which found that a four month period to be a brief period of emptiness which does not necessitate an end to a tenancy agreement.

The Tenants submit that their proposal to the Landlord to accommodate the renovations is evidence that the Landlord does not have a good faith intention and the Landlord has not met the burden to prove this as outlined in Policy Guideline 2. The Tenants submit that the Landlord's motive to do the work is to end the tenancies so that they can re-rent the Property out to higher income tenants and increase the value of the Property significantly which is the true and ulterior motive for the renovations. The Tenant's advocate pointed out that the building's estimated renovated value in the Landlord's evidence was redacted and this is evidence of bad faith.

In response to the Landlord's rationale for undertaking the work as a requirement of their financing the Tenants submit that after having a conversation with the financing company, it was confirmed that the company did not require any means of renovations being carried out and therefore the work plan is highly elective and speculative. The Tenants submit that the Landlord has deliberately chosen to undertake the work in a manner that unnecessarily requires the displacement of the Tenants when the Landlord has a right to apply for an extraordinary rent increase under the Act at a later date.

The Tenants also provided detailed calculations and analysis of the projected market rental rates the Landlord is anticipated to gain for the Property. The Tenants' legal advocate stated that the Landlord has no pattern of negotiation and only started to negotiate when the Tenants exercised their right to cancel the First Notice. The Tenants submit that the Landlord stipulated unrealistic conditions and timelines around his offers of settlement and that the Tenants rejected this because they would be eligible for increased compensation if the Landlord obtained the proper permits. The Tenants point to this as the bad faith intention of the Landlord.

The Tenants' legal advocate pointed out that the renovations planned by the Landlord can be accomplished by performing work to one building at a time rather than be undertaken in a simultaneously fashion. The Tenants' legal advocate suggested that the only shared services at the Property, namely hot water and heating, can be capped off and closed at the third floor connection to one of the buildings and allowed to just supply the other. This will involve minimal disruption to the Tenants and will allow the Landlord to achieve the desired renovations.

The Tenants' counsel and advocate then called four witnesses who provided evidence under direct examination on the issue of vacant possession and whether the tenancies were required to be ended. The Tenants' witnesses were cross examined extensively by Landlord's counsel and the Landlord's agent, the full details of which are contained in the Court Reporter's transcript.
During the first witness's evidence, the Tenants' legal advocate stated that Tenant SR had contacted the Landlord's agent to arrange for access to the boiler room so that the first witness could make an examination of the boiler system. SR testified that the Landlord's agent was sent an email with the request but access was denied thereafter. Landlord's counsel denied the Landlord's agent was requested to provide access to the boiler room for the purpose of an inspection. SR confirmed that the emails she alleged to have sent to the Landlord's agent were not provided into evidence for this hearing.

The Tenants' first witness, JS, disclosed a family relationship with the Tenants' legal advocate. JS confirmed that he used to be an environmental consultant with 15 years of experience dealing with projects similar to the one in dispute. JS testified that in his personal opinion after reviewing the Landlord's documentary evidence, the only services he could see that were shared between the two buildings were heat and hot water and testified that these could be separated between the two buildings.

JS also confirmed that the hazardous material abatement could be done in staging areas in one building at a time.

JS confirmed that he had experience with asbestos abatement and stated that the Landlord's evidence with respect to asbestos was based on a visual analysis and that the total scope of work cannot be verified until in situ work is done. JS explained that this would present the Landlord considerable cost surety and risk issues. Therefore, it would be better for the Landlord to complete the work on a building by building basis which would make it more cost effective.

JS testified that after he reviewed the Landlord's evidence he noted that there was no work plan provided by the Landlord which makes it difficult to understand why the project would be approached simultaneously. JS explained that based on the engineering report the only critical system in the building was the shared water distribution and he could see no reason why the piping couldn't be capped to one building to allow construction to start on the other.

In cross examination by Landlords' counsel, JS confirmed his experience dealing with wood frame projects and asbestos abatement. However, JS confirmed that he had no experience dealing with projects where buildings remained occupied and was not a licenced or qualified in asbestos removal. JS also confirmed that he had done no personal inspection of the building and was not a qualified plumber and therefore could only base his oral testimony on the reports provided. JS also confirmed that it was not mandatory to have a work plan and confirmed his evidence was based on his personal opinions.
Under direct examination, the Tenants' second witness, AF, confirmed that he was a licenced plumber with 14 years of experience. AF confirmed that he had reviewed the Landlord's evidence and concluded that it would take approximately two months to lay piping in both buildings. AF testified that it was possible to cap off the water supply to one of the buildings as it was a first supplied last return loop system. AF testified that the draining of the system would take two to six hours.

Under cross examination by Landlord's counsel, AF testified that he had not done a visual inspection of the units or examined the drawings of the building layout. Landlord's counsel put to AF that if somehow the boiler would be able to looped to serve just one building, this would create a safety issue as the boiler would be oversized for that building. AF testified that he did not know if a mechanical engineer would sign off on such a proposal or whether the Landlord would be able to obtain liability insurance if the systems were to be separated in the manner suggested by him. The Landlord's agent also cross examined AF and suggested the pipes were really old and connecting an oversized boiler would likely cause stress and strain on the system.

The Tenants called their third witness, TdG who testified that he was providing only oral testimony as a licenced general contractor and a ticketed carpenter who had recently retired. TdG testified that he had reviewed the Landlord's evidence and did a visual inspection of the rental units. TdG testified that it was possible to do the planned renovations, including demolition and removal of plumbing and electrical, on a building by building basis and that power could be maintained to each building separately.

TdG stated that he had done a visual inspection of the building exterior and had noticed the rot to the exterior decks. TdG testified that he would consider the exterior decks and fire escapes a safety priority to undertake first.

TdG was cross examined by Landlord's counsel and confirmed that he was not licensed to do hazardous material abatement and he was not a licenced plumber or electrician. However, TdG testified that his role as a general contractor was to manage the sub trades and have a good working knowledge of them. TdG acknowledged that it would be difficult to manage noise and debris if the work was being done on a building that was occupied but stated that this is the reason why the work should be done on a building by building basis.

The Tenants called their last witness, CV, who was an original applicant party to this dispute and had, prior to these hearings, mutually agreed to end his tenancy with the Landlord. CV stated that the reason for his agreement to end his tenancy was because the stress and anxiety associated with eviction and the way the Landlord had treated the Tenants had taken its toll on him.

CV provided testimony that prior to the Landlord purchasing the Property he had heard the Landlord's agent state during a visit to the Property that he was going to kick the Tenants out to get higher rent.

Landlord's counsel cross examined CV and questioned why he was giving evidence in this hearing as a previous tenant. CV responded that he had no personal stake in the matter and was appearing to only give evidence. Landlord's counsel suggested that CV did have a personal stake in the matter and that he was bitter towards the Landlord because he had initialled the mutual agreement with the letters F and U suggesting this was a swear word. CV denied this was a swear word explaining it was letters he used often from an old habit of being in the car mechanic business.

In closing arguments, Landlord's counsel referred to the affidavit of the Landlord's agent provided into evidence. In this affidavit, the Landlord's agent confirms that there was only one sewage system in the building which he had observed from his own inspection and this had been confirmed by the city.

In the affidavit, the Landlord explains that he does not have a work plan as it is difficult to predict the entire scope of work due to an unknown hazardous abatement schedule and that he has a relationship with his contractors that does not require this. The Landlord's agent explains that he does not need to obtain cost surety as he is the final decision maker in the planned renovations and his experience comes from doing multiple projects of this type.

The Landlord's agent states in the affidavit that in response to the Tenants' rebuttal evidence he had enquired with the city about the need to obtain a DV permit at which point he was informed that if a DV permit was required then the building permits that were issued could not have been obtained. The Landlord's agent explains that this fact is also highlighted in the Tenants' evidence. The Landlords' agent also confirmed that he enquired with the city about obtaining a DV permit for the exterior stairwells and the city confirmed that the work proposed to the stairwells does not require such a permit as suggested by the Tenants.

The Landlord's agent continues to explain in the affidavit that the hot water heating system in both buildings is piped in one continuous loop and that once work starts in one rental unit, both buildings will lose heat and it would not be practical to drain and refill the system each day after work is undertaken. The Landlord's agent concludes stating that the title searches provided by the Tenants do not advise as to the state of zoning for the buildings.

In closing arguments, Landlord's counsel explained that the data and analysis the Tenants have performed with respect to the increase rent profit to be gained by the Landlord is not relevant. Landlords' counsel explained that the Landlord's witness evidence shows that the Landlord intends to undertake the renovations in good faith and have obtained the necessary permits. Landlord's counsel explained that once the three part test established in the Berry case has been met, then the Third Notice must be upheld and no consideration maybe given to factors that fall outside of this test, such as the Tenants' financial circumstances.

Landlord's legal counsel questioned the evidentiary credibility of the Tenants' witnesses stating that the Landlord had provided expert testimony versus the Tenants' lay evidence which was obtained under leading questioning by the Tenants' legal advocate.

Landlord's counsel explained that the Tenants have failed to supply evidence to show the Landlord is required to have a DV permit and their position in this respect is unsubstantiated. Therefore, for the Tenants' claims to have any convincing effect, it needs to be supported by evidence.

The Landlord's counsel explained that the bylaw provided by the Tenants is not helpful as it does not show how it applies to this proceeding. Landlord's counsel explained that the bylaw states that a building permit cannot be issued unless a DV permit has been issued, if one is required and that the Landlord has building permits for the scope of work to be performed and therefore this notion is defeated.

Landlord's counsel explained that the permitting scheme is technical and specialised and that the Tenants have attempted to pick at certain points of the permits and scheme to suggest that the permits are not adequate.

Landlord's counsel stated that the Tenants have pointed out a statement at the middle of each page that states, "No building alteration work proposed" and they have taken the statement out of context and tried to use it to establish that the scope of work is limited. However, this work is covered by other permits provided into evidence. The Landlord's counsel stated that the Tenants should have challenged the Landlord's expert witnesses during cross examination regarding how they got the permits. Therefore, in this case, the views of the tradespeople who have expertise and knowledge to pull construction permits should be preferred to the lay evidence of the Tenants.

Landlord's counsel states that the Tenants cannot point to any concrete or compelling evidence that the Landlord does not have permits, but the Landlord has provided expert evidence to show that building permits are in place and these experts know how the permitting process works.

Landlord's counsel stated that the Landlord has a good faith intention as the Landlord has obtained construction financing and has contemplated a substantial renovation of the Property. In addition, the Landlord has retained a mechanical engineer and numerous contractors to actually carry out the intended work. Landlord's counsel submitted that the Tenants' question the good faith of the Landlord without providing any expert evidence from their witness testimony and have taken an expansive view of good faith which doesn't accord with the legislation.

Landlord's counsel stated that the Tenants have attempted to establish bad faith because the Landlord will be in a position to rent out the units at an increased rent. Landlord's counsel stated that this position is without merit, because it means that a landlord cannot undertake a renovation requiring vacant

possession in a rising rental market because a landlord always would be in a position to rent out the units at an increased rent afterwards. Landlord's counsel asserted that if this were to be the case then such a peculiar result would have to have been expressly set out in the Act, which it is not.

Landlord's counsel stated that the Landlord has put forward offers to the Tenants in good faith and which is not an action the Landlord is required to take under the Act, but the Tenants refused to accept that offer which is no longer available to the Tenants.

Landlord's counsel explained that they have provided substantial evidence as to why the Landlord is proceeding to have work done to both buildings at the same time because it is not physically possible to stagger the work as suggested by the Tenants. Landlord's counsel referred to the extensive testimony given by the Landlord's experts to show that when the work started to the Property, it will turn into a dangerous construction site and that no Tenant will be able to live in these unsafe and uncomfortable conditions.

Landlord's counsel stated that the aggregate total effect of the scope of work in this case should be given consideration and weighed up with the Tenants' enjoyment. Landlord's counsel pointed to the unchallenged evidence of the Landlord's experts who state that the work could not be carried out while the Tenants occupied their rental units. Therefore, this places the Landlord in an unfair position when it comes to having the work undertaken.

Landlord's counsel stated that the facts in the Berry case showed circumstances where the landlord was engaged in bad faith and involved an end to the tenancy for work proposed to be undertaken over the course of a few days for minor cosmetic repairs. Landlord's counsel explained that the very fact that the Tenants offer to accommodate the planned renovations is evidence that the rental units are required to be vacated. In addition, the Tenants have picked at individual repair items to suggest that each item does not require vacant possession; however, the Tenants have failed to look at the totality of the work involved which is a fundamental transformation of the Property.

Landlord's counsel stated that it would be an unreasonable interpretation of the legislation if a tenant could dispute a notice under this section by asserting a willingness to relocate and return after the work had completed regardless of the length of renovation. Furthermore, it would be unreasonable because this could be used as a basis to set aside any such notice and it would deprive this section of the Act of any practical purpose.

Landlord's counsel stated that Supreme Court decisions are binding for compositions of law and not on the facts of a case. In addition, the Act state that a decision from the Residential Tenancy Branch must be made on its own merits and is not required to be followed by all Arbitrators.

The Tenants' legal advocate responded in closing arguments to the Landlord's submissions disputing the allegation that their witnesses had been asked leading questions. The Tenants' legal advocate explained that the Landlord has remedy under the Act to increase the rent, but the Landlord is attempting to bypass that remedy by ending the tenancies.

The Tenant's legal advocate explained that they were not in a position at the November 23, 2017 hearing to cross examine the Landlord's witnesses as they had not prepared for the Landlord's evidence to be heard. Therefore, the Tenants have not waived their right to agree with the Landlord's witness evidence.

The Tenants' legal advocate stated that the Tenants have led substantial evidence that the DV permit is in fact required and the Landlord has provided nothing to rebut that, aside from the assertion that he spoke to the City about the issue of the stairway tread. The Tenant's legal advocate pointed to their own witness evidence to show that visual inspections performed show that this work was not put before the city and that the city can only assess the work that is put before it. Therefore, the idea that the Landlord's tradespersons simply applied for a permit and got it does not speak to whether all the permits for the scope of work the Landlord is anticipating are in place.

The Tenants' legal advocate stated that if the Landlord wants to get market rent then there are other avenues and relief provided by the Act. The Tenant's legal advocate stated that the idea that the Tenants have not considered the totality of the work on the basis that it is a large and complex project is without merit as the Landlord would be required to provide evidence of the exact work that is required as outlined in the additional Supreme Court decision the Tenants had provided into evidence.

Analysis

Section 49(6) (b) of the Act 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant. Section 49(8) of the Act provides that a tenant may dispute a notice under section 49(6) (b) within 15 days after receiving it.

In examining the Third Notice subject of this dispute, the parties confirmed that there were no issues with regards to the contents on the approved form used by the Landlord as required by section 52 of the Act. In addition, no issues were raised with the fact that the Tenants had applied to dispute the Third Notice within the statutory time limit provided for by section 49(8) of the Act. I also determined that the First and Second Notice were abandoned by the Landlord and are now of no cause or effect.

In the Berry case the courts determined three requirements a landlord must follow in order to satisfy the burden to prove the tenancy must end:

- the landlord must have the necessary permits and approvals required by law;
- the landlord must act in good faith with respect to the intention to renovate; and
- the renovations are to be undertaken in a manner that requires the rental units to be vacant.

The final part of the above test has two additional dimensions that the landlord must satisfy, namely (a) the renovations proposed are so extensive that they require vacant possession and, (b) the only way to achieve vacant possession is for the tenancies to end. If the Landlord fails to prove any part of this test the Third Notice must be cancelled.

As a result, I must now consider the evidence of both parties on the balance of probabilities in determining whether the Landlord has met the burden to prove the Third Notice. Accordingly, I first turn my mind to the Landlord's requirement to have the necessary permits or approvals required by law. I note that this part of the Act places a statutory duty on the Landlord to prove that the relevant permits **and approvals required by law** are in place before the notice to end tenancy is given. In this respect, I make the following findings.

The Act does not define what would be considered or constitute approvals and which laws these approvals are intended to follow or comply with. However, as the Act makes mention of permits required by law, a permit is generally obtained in accordance with city by-laws. Therefore, I reject the Landlord's submission that the existence of other legislation such as local government bylaws dealing with the relocation of residential tenants is not relevant here. In my view, a requirement of a landlord to comply with city bylaws that pertain to residential tenancies are inextricably linked and would therefore constitute a necessary approval required by law under section 49(6) (b) of the Act.

I also make this finding because the Tenants in this case assert that the Landlord has failed to comply with the city's TRP policy which was a document provided into evidence in the Tenants' original evidence package. I have examined this TRP policy in detail. In particular, page 5 and 6 of that document states:

> *1.4 Vulnerable Tenants*
> *Vulnerable tenants, such as seniors, persons with disabilities, or those living on very low incomes, are among those most affected by redevelopment or renovation. They often require more assistance in the relocation process as there are fewer choices available to them. These individuals also tend to be longer-term residents, and the process of moving may be more challenging for them.*
>
> *1.5 Policies in this document*
> *The policies in this document are intended to protect tenants by mitigating the impacts of displacement resulting from redevelopment activity, while recognizing that some renewal is necessary to maintain the health of the overall rental stock.*
>
> *The City has rental replacement regulations contained in the Rental Housing Stock Official Development Plan to protect the existing market rental housing stock in certain RM, FM, and CD-1 zones. In addition, the Single Room Accommodation By-law manages the rate of change of low-income housing in Vancouver's Downtown Core and contains requirements around tenant relocation. The Tenant Protection and Relocation Policy will work in conjunction with these existing regulations, but is also part of a larger strategy that addresses the housing needs of low and moderate income households.*
>
> *The Housing and Homelessness Strategy includes priority actions to help renters by protecting the existing rental housing stock and aims to use financial and regulatory tools to encourage a variety of housing types and tenures that meet the needs of diverse households. As well, the Strategy sets targets by 2021 for secured market rental housing (5,000 units), social housing (5,000 units) and supportive housing (2,900 units).*
>
> *1.6 Role of the British Columbia Residential Tenancy Act*
>
> *British Columbia's Residential Tenancy Act (RTA) regulates all tenancy agreements in residential rental units across the province. It is essential for both landlords and tenants to understand their rights and responsibilities under the RTA. As described above, there is significant pressure on the city's existing rental stock, resulting in significant challenges for both landlords and renters. The policies in this document are intended to supplement the RTA, while addressing challenges that are unique to Vancouver.*

2.0 POLICY TARGET

This policy is targeted at the "primary" rental stock, where the purpose of the building is to operate rental housing in the long-term. This includes:
- *purpose-built market rental housing;*
- *non-market or social housing;*
- *buildings with rental units above commercial spaces; and*
- *large multiple conversion dwellings with six or more units.*

A Tenant Relocation Plan or Tenant Impact Statement will be required when tenants in existing residential rental units are displaced or impacted as a result of redevelopment or major renovation activity. This policy is applicable in all zoning districts, except single family, industrial, and agricultural areas and is intended to inform the rezoning and development permit processes.

2.1 TENANT PROTECTION FOR PERMANENT RELOCATION

Tenant Relocation Plan

Applicants seeking a rezoning or development permit will provide a Tenant Relocation Plan when tenants in existing residential rental housing units will be displaced. The work typically results in the entire building, or part of the building, being demolished or emptied.

[Reproduced as written]

The Tenants in this case have provided clear documentary evidence at Exhibit 9B and 3B to satisfy me that the Property is in the city's RM zone. Therefore, I find the Property would be subject to the TRP policy. I concur that the TRP policy is designed to work in conjunction with the Act and the intention of the policy is to ensure that renters are protected from the impacts of displacement, which is what the Landlord intends to do in this case by ending the tenancies.

In addition, as evidenced in the background section of this Decision at page 14 and 15, the TRP policy requires that if the scope of work requires permanent displacement of tenants, an applicant will be requested to provide a Tenant Relocation Plan which offers tenants extensive relief that goes beyond the Third Notice. In this case, the Landlord certainly presented an abundance of evidence to demonstrate the need for vacant possession and the requirement for permanent displacement of the Tenants. Yet, the Landlord did not produce a Tenant Relocation Plan or a Tenant Impact Statement as required by the TRP policy.

The Tenants argue that the Landlord was required to obtain a DV permit from the city but has bypassed this requirement and obtained less substantial permits as a way to get around the DV permitting process. The Tenants suggest that as a result the Landlord has avoided the TRP policy which requires a landlord's compliance if they are seeking a DV permit. In this respect, I turn to the Interim Decision dated October 23, 2017 from the preliminary hearing rendered by Arbitrator Maddia. At page 2, he documents:

"The tenants clarified that they were seeking to cancel the Notices as they believe the landlord does not have all the necessary permits required by law and that even if the landlord has all the necessary permits the renovations the landlord seeks to make do not require vacant possession.

The tenants also submit that the landlord is required, by local bylaw to provide the right of first refusal…
The landlord also submitted that the issue of first refusal is outside of the jurisdiction of the Residential Tenancy Branch. While I make no findings on the issue of jurisdiction in this preliminary hearing I advised the parties that the decision would be up to the Arbitrator who hears the case if it is raised as an issue, during the hearing. I advised both parties that they may wish to submit copies of local applicable bylaws, as evidence."

Therefore, I find that from the onset of the preliminary hearing, the Landlord had been put on notice that the Tenants intended to dispute the reason on the notices to end tenancy because the Landlord was required to comply with the local bylaw to provide the right of first refusal, which I now determine to be the TRP policy. In addition, the Landlord was provided a copy of this TRP policy in the Tenants' first evidence package for the November 23, 2017 hearing.

As a result, I find that when the Tenants raised the issue of the Landlord's requirement to follow the DV process and in turn the TRP policy, the Landlord had an obligation to meet the burden to prove that they had the necessary approvals required by law. This burden does not rest with the Tenants but with the Landlord. Therefore, I find that it was appropriate and reasonable for the Landlord to have at that point furnished sufficient evidence to rebut the Tenants' claims regarding the approval process the Landlord went through.

Instead, the Landlord seeks to put this burden on the Tenants by pointing to the Tenants' lack of concrete evidence showing that the DV permit is applicable in this case. The Landlord relies on rebuttal evidence to the Tenant's assertions in the Landlord's agent's sworn affidavit stating he had contacted the city who had informed that he did not require a DV permit. I find that this submission alone is not sufficient to satisfy me that the Landlord was exempt or not required to follow the city's DV permitting process.

This is because I find the Landlord failed to provide sufficient evidence of what information had actually been furnished to the city in order to obtain the permits provided into evidence. For example, a completed permit application, or communication showing the Landlord had informed the city that the tenancies at the Property were going to be ended and the Tenants were going to be displaced.

Landlord's counsel stated that the Tenants had failed to cross examine the Landlord's witnesses about the permitting process and how they were obtained. However, I find it would have been just as prudent for the Landlord to have provided this detail during direct examination of the Landlord's witnesses which could have given clarity to the issue of whether a DV permit is required in this case.

Without the Landlord providing clear and corroborating evidence to show the process followed and whether it complied with the city bylaws that were in place at the time the Third Notice was issued, I find this understandably left the Tenants to speculate and suggest that the Landlord had bypassed the DV permitting process by not giving the city the full information. Without these details, I am not too sure how the Tenants would have been able to prove the route the Landlord took to obtain the permits was incorrect. Or that the Landlord was exempt from having to obtain a DV permit and reasons why the Landlord did not have to follow the city's TRP policy.

I find that while the Tenants failed to provide supporting or corroborating evidence regarding the Lead Tenant's conversations with two city officials to confirm that the Landlord was required to obtain a DV

permit, the Landlord's agent also failed to provide corroborating evidence of his verbal conversation with city officials that no DV permit was required. Therefore, I am only able to conclude that because the Landlord had been put on notice of this part of the Tenants' defense, the Landlord has failed to provide sufficient evidence to convince me that they were not required to follow the DV permitting process.

The Landlord relied on the Tenants' evidence stating that it shows the permits issued by the city could not have been issued if the Landlord had to obtain a DV permit. However, I have examined evidence at Exhibit 2B which states:

> *"If you need a development permit for your construction or renovation project, you will also need a building permit and at least one related permit (gas, electrical, plumbing, tree removal, or other). Your development permit must be issuable before you can apply for a building permit. Simpler projects may qualify for a combined development-building permit".*
>
> [Reproduced as written]

I find that this wording is not sufficient for me to conclusively conclude that the Landlord's electrical and plumbing permits could not have been issued if a DV permit was required. With respect to the above wording, I find the Landlord still had the onus to provide evidence to this proceeding that the DV permit was not issuable. I find the mere issuing of electrical and plumbing permits by themselves does not convince me that the Landlord did not require a DV permit.

I note the Tenants did provide a number of bylaws into evidence and relied on content from a number of different documents, such as a definition from the city's Heritage Action Plan document. I concur with Landlord's counsel that the bylaws are technical and specialized and I agree that it is not appropriate for the Tenants to draw inferences on the basis of content stitched together from different policy and bylaw documents. However, I note Landlord's counsel's acknowledgment that the city's bylaws were comprehensive and complicated in nature. Therefore, I find this placed even more of an onus on the Landlord to show how the bylaws had been approached and navigated when these permits were obtained.

I am not an expert in the city's bylaw legislation. Neither do I have any jurisdiction to enforce any bylaws. However, I find that in this case, the Landlord had a duty to provide sufficient evidence of the bylaws that were relied upon to obtain the permits, or to provide evidence of exemption when this issue had been raised and challenged by the Tenants. Sufficient evidence of this was not placed before me by the Landlord.

While the Landlord provided compelling evidence through witness testimony and documentary evidence that they intend to do the planned renovations, I find the Tenants have successfully argued and questioned the Landlord's compliance with local municipal requirements with respect to the DV permitting issue.

I find that based on the city documents provided by the Tenants into evidence, the landlord has failed to provide sufficient evidence to establish that all approvals required by law have been obtained to complete the planned renovations. This is because I find the TRP policy places a significant burden and requirement on the Landlord to compensate the Tenants, which goes well beyond that provided for under the Third Notice.

With respect to the Tenants' submissions regarding the requirement of the Landlord to obtain a DV permit due to the addition of basement units to the Property, the Landlord again relied heavily on the affidavit of the Landlord's agent. This affidavit confirms that the Landlord does not plan to add these units.

However, I have examined the Tenants' evidence at Exhibit 7B and there is no reason for me to not conclude that this screen capture from the Landlord's financing company relates to the Property. I find the December 1, 2017 date of this document, which allows the borrower to renovate the building and add four additional units, in my view brings into doubt the Landlord's agent's evidence that the Landlord does not intend to add in additional units.
While there is nothing in the scope of work documents provided by the Landlord to show the addition of basement units to the Property, I find there would be nothing stopping the Landlord from later adding in rental units if tenancies were ended under the Third Notice.

In addition, I note that at Page 4 of 15 in the Landlord's engineer report it does recommend that all decks and exterior stairways require immediate reconstruction. I also note in the Tenants' evidence at Exhibit 2B of the city's website, it shows that a DV permit is required for all additions and exterior alterations. As a result, I find it difficult to understand how the Landlord would undertake a major transformational renovation to the Property without avoiding urgent and necessary repairs recommended by professionals to the exterior of the buildings, which I find in turn would trigger the DV permitting process.

Based on the totality of the evidence and circumstances placed before me, I find that while the Landlord has provided evidence of permits for the scope of work the Landlord intends to undertake, the Landlord has failed to satisfy me on the balance of probabilities that they have all the necessary approvals required by law; namely that the Landlord is exempt from having to go through the mandatory city DV permit process and that there is no requirement for the Landlord to comply with the TRP policy which is intended to protect displaced tenants.

I conclude that the Landlord failed to provide sufficient rebuttal evidence when the Tenants enquired about the process followed by the Landlord to obtain all of the relevant permits in this dispute. I find the Landlord's rebuttal evidence was weak and comprised of insufficient corroborating or supporting documents demonstrating the Landlord had complied with all of the permitting requirements of the city which I find was germane to this dispute.

Accordingly, I find the Landlord has failed to meet the first part of the test established by the Berry case. Therefore, there is no requirement for me to analyze and make findings on the remaining portions of the test. As a result, the Third Notice cannot succeed and must be cancelled. The tenancies for each Tenant party to this dispute will continue until such time they are ended pursuant to the Act.

As the Tenants have been successful in cancelling the Third Notice, I award the Tenants recovery of their filing fees under section 72(1) of the Act. The Tenants may achieve this relief by deducting $100.00 from their next installment of rent in accordance with section 72(2) (b) of the Act.

Conclusion

The Landlord has failed to prove that they have the necessary approvals required by law to end the tenancies in this dispute. Therefore, the Tenants' request to cancel the Third Notice dated October 3, 2017 is granted. The Tenants may recover their filing fees from their next installment of rent. The

tenancies for the Tenants subject to this dispute will continue until such time they are ended in accordance with the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 27, 2017

Residential Tenancy Branch