



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      PFR

### **Introduction**

On October 30, 2021, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy and for an order of possession for the rental unit in order to perform renovations or repairs that require the rental unit to be vacant.

The matter was set for a conference call hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The tenants did not submit any written evidence for this hearing.

### **Issue to be Decided**

- Does the tenancy need to end in order for the Landlord to perform renovations or repairs that require the rental unit to be vacant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began approximately 5 years ago with LH and their son as the original tenant. CB moved in on September 1, 2021, replacing LH's son, and a new month-to-month tenancy agreement was signed. Monthly rent is set at \$1,340.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$670.00, which the landlord still holds.

The landlord filed this application in order to obtain vacant possession of the rental unit in order to perform repairs to the rental unit. The landlord testified that the home is in disrepair, and although the upstairs portion of the home was renovated in 2018, the repairs for the tenants' rental unit was postponed. The landlord testified that they had discovered during inspections that the rental unit has deteriorated to the extent that repairs are required. The landlord testified that delaying the repairs would be costly, and the landlord cannot wait any longer to start the repairs. The landlord testified that repairs and renovations would be completed in the only kitchen and bathroom in the suite, and would take at least two months. The landlord testified that the tenants would not have access to essential facilities such as the toilet, shower, and sinks, and therefore the renovations would require that the tenants move out. The landlord testified that there were numerous issues such as faucets rotting, rats, and pipes freezing in the shower. The landlord testified that after demolition there may be more issues that have yet to be discovered.

The landlord testified in the hearing that this was a "small job", and submits that no permits were required.

In reply, the tenants testified that they do not believe the landlord is acting in good faith. CB testified that they had moved in on September 1, 2021, and would not have entered into the tenancy agreement if the home was not in good condition. CB testified that both parties did a walk through at the beginning of the tenancy, and at the time of the hearing the rental unit remains in good condition. The tenants testified that the issue with the frozen pipe was due to the weather, and has been resolved. The tenants testified that the main reason for why the landlord wishes to end the tenancy was due to the strained relationship between CB and the landlord. The tenants testified that the relationship changed after the CB had informed the landlord that the outdoor light was not working properly, and that there were storage space issues. CB testified that the landlord had

threatened to end the tenancy. LH testified in the hearing that they had lived there for over 5 years with no issues. The tenants testified that they were willing to work with the landlord and remain in the rental unit if the landlord were to perform the repairs cited in this application.

### **Analysis**

Section 49.2(1) of the Act provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;*
- (b) the renovations or repairs require the rental unit to be vacant;*
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;*
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.*

The Act provides that the director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

*When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.*

...

*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.*

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

*Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the*

*tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.*

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

*In Allman v. Amacon Property Management Services Inc., 2006 BCSC 725, the BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the “nature and extent” of the renovations or repairs require the rental unit to be vacant.*

*Renovations or repairs that require the rental unit to be vacant could include those that will:*

- make it unsafe for the tenants to live in the unit (e.g., the work requires extensive asbestos remediation); or*
- result in the prolonged loss of a service or facility that is essential to the unit being habitable (e.g., the electrical service to the rental unit must be severed for several weeks).*

*Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant.*

#### Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

*In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.*

*In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of*

*vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.*

Based on the above, the testimony and evidence of the landlord and the tenants, and on a balance of probabilities, I find as follows:

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

I find that that as of the hearing date, the landlord had yet to obtain any written estimates or scope of work for the intended repairs. The landlord testified that they had obtained the estimate of at least two months based on their previous experience and discussion with their contractors, and feel that this is a true and reasonable estimate of the time required to complete the repairs and renovations described. The absence of these supporting documents, or witness testimony by a certified contractor causes me to question the extent of the work required and that the landlord truly needs at least two months to complete the repairs. As noted above, the onus is on the landlord to provide sufficient evidence to support their application, and in this case I find that the landlord falls short.

Furthermore, the tenants have expressed a willingness to accommodate the repairs without moving out. I find that as of the hearing date, the landlord had not fully considered or proposed this option to the tenants.

After consideration of the evidence before me, I find that the landlord has failed to provide sufficient evidence that the renovations or repairs require the rental unit to be vacant; and that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

The Landlord's application for an order ending the tenancy and for an order of possession for the rental unit in order to perform renovations or repairs that require the rental unit to be vacant is not successful and is dismissed.

### **Conclusion**

The landlord has provided insufficient evidence to meet their burden to prove that the planned work reasonably requires the tenancy to end.

The landlord's request for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant is denied.

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: December 31, 2021

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Residential Tenancy Branch