



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PFR, FFL

### Introduction

On July 16, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant.

The matter was set for a conference call hearing. The Landlord and Tenant attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Landlord entitled to end the tenancy due to renovations or repairs?

### Background and Evidence

The Landlord and Tenant provided testimony that the tenancy began in July 1998 and is on a month-to-month basis. Rent in the amount of \$1,142.00 is to be paid to the Landlord by the first day of each month.

The Landlord provided testimony on the reasons why the tenancy must end. The Landlord stated that the rental unit is located in a multi-unit residential building containing 37 rental units and the building is close to 60 years old. The Landlord testified that because of the age of the building and because the useful life of building elements such as plumbing is past its useful life, every suite needs to be repaired /renovated.

The Landlord stated that they purchased the property four years ago and started a renovation program. The Landlord testified that they have renovated eight or nine other units on the residential property. The Landlord testified that they make every attempt to not kick tenants out and have offered other tenants other units located on the property.

The Landlord submitted that the condition of the rental unit at dispute is largely original and there is an issue with water leaking from the plumbing into the unit located below. The Landlord stated the plumbing has pin-hole leaks.

The Landlord testified that the rental unit requires the following renovation:

- Replacement of most drywall.
- Upgraded electrical panel and wiring.
- Re-piping of water and drainage.

The Landlord stated that he has all the permits required to complete the work and has a contractor and team ready. The Landlord provided copies of work permits issued from the City for construction, electrical work, and plumbing at the rental unit. I note that the work permits were issued prior to when the Landlord applied for dispute resolution.

The Landlord testified that the drywall taping, and ceiling texture coat contains asbestos, and the Landlord provided a report from an environmental health and safety consulting company who conducted an inspection of the unit on June 19, 2021 and found asbestos in the drywall taping compound and ceiling texture coat. The report provides an analysis summary showing asbestos located in the bathroom and kitchen areas. The report provides:

*Asbestos containing materials must be removed prior to demolition activities in accordance with WorkSafeBC regulations and disposed of in accordance with BC Ministry of Environment.*

The Landlord submitted that due to the age of the building, the drywall compound contains asbestos and lead based paint, and that need to remove the asbestos and paint according to WorkSafeBC regulations, continued occupancy of the rental unit is not possible.

The Landlord submitted that all plumbing fixtures, drains, and most of the supply lines in the unit are original and well past the end of their service life. The Landlord provided an email from a plumbing company dated July 16, 2021 that indicates the plumber attended the unit and recommends that the unit needs a complete re-piping of water and drainage piping. The Landlord provided a document setting out the maintenance records for the rental unit from May 2019 to September 2021. The document indicates 12 occasions where water from the unit was leaking below.

The Landlord submitted that all the wiring and the fuse box are original and that Tenants tampering of the fuses by putting a 20-amp fuse in a 15-amp circuit has created an unsafe situation. The Landlord stated that the existing wiring does not meet the needs of tenants and all their appliances. The Landlord stated the existing wiring is at risk for getting hot and the load trips breakers. The Landlord submits that the fuse box, wiring, outlets, and fixtures must be replaced to meet current building code and safety standards. The Landlord stated that all the wiring in the unit is being upgraded to 20-amp wiring. The Landlord provided a copy of a letter from an electrician dated October 16, 2021 which indicates the electrician inspected the unit and the wiring is original from the mid 1960's and the kitchen has two circuits, and the current electrical code requires 5 circuits. The electrician writes that the kitchen wiring needs to be replaced with 12-gauge wiring.

The Landlord stated that because of the presence of asbestos in the drywall, and al, the other work to be performed at the same time, the rental unit needs to be vacant.

The Landlord submitted that the Tenant removed most of the carpets from the unit without consultation or approval from the Landlord. The Landlord submits that the exposed sub-flooring also needs to be repaired and replaced before new carpet can be installed.

The Landlord testified that the renovation work will cost between \$50,000 to \$60,000 and that based on similar work he has completed on dozens of other units he owns in the city, the renovations /repairs have taken up to 4 months. The Landlord stated that the asbestos removal and the city inspections of the work adds more time to complete the work. The Landlord stated that he used to be able to complete this type of work in two months.

The Landlord testified that in June 2021 they offered another rental unit with the same layout to the Tenant at a reduced rent amount which is lower than market rent. The Landlord indicates the Tenant rejected the offer.

In reply, The Tenant submits that the Landlord is trying to end the tenancy so that he can turn over the unit and charge the next tenant more than double the current rent.

The Tenant testified that he has provided a submission from a building management expert that the scope of repair does not require long term vacancy and can be completed without ending the tenancy. The Tenant stated that he is willing to temporarily re-locate in order to maintain the tenancy.

The letter from the Tenant's expert in regard to plumbing indicates that he is a facilities manager for seniors rental housing. He submits that in 2013, 2017, and 2021 re-piping of numerous senior housing suites was completed and that they never had to evict any tenants for re-piping purposes or any other renovation projects. He submits that asbestos abatement took five hours for one day and that the water was turned back on at the end of each day. He submits that the work lasted for an average of 10 business days. He submits that under no circumstances should a tenant be re-evicted for work carried out similar to what is outlined in his submission.

The Tenant provided a letter dated September 17, 2021 from an electrician who indicates he has 28 years of experience. The letter indicates that he inspected the electrical wiring in the kitchen and bathroom as well as the fuse box. His letter provides that the fuse box needs to be replaced, but the kitchen and bathroom electrical does not need to be rewired as it meets code and safety requirements. He submits that re-wiring the unit should take two days to complete. He submits that the time needed to complete the renovation work is 2-3 weeks at most.

The Tenant stated the carpet he removed was very old and that the replacement of flooring can take place one room at a time while he occupies the unit. The Tenant provided a letter from a flooring contractor which states that he inspected the unit and that there is original carpeting and flooring in the unit. The contractor writes that this repair can be done while the Tenant still occupies the unit.

The Tenant pointed out that the Landlord's report from the environmental health and safety consulting company indicates the scope of the asbestos issue is limited to the kitchen and bathroom.

The Tenant testified that approximately 10 to 15 years ago the previous Landlord ripped out his bathtub and the surrounding area trying to locate a leak coming from that area.

## 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 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.*

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 Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”.*

*Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.*

*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).*

### **Is it Necessary to End the Tenancy Agreement?**

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

*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.*

*On the other hand, 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.*

Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides:

*If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy. The right of first refusal (see below) contemplates new tenancy agreements being provided at least 45 days before the renovations or repairs that ended the tenancy are completed. If the timeframe is longer than 45 days, it may be unreasonable for the tenancy agreement to continue even if the tenants are willing to make alternative living arrangements. The longer the timeframe, the less likely the tenant can be considered to retain the rights of possession and use contemplated for tenancy agreements, as established in the RTA, and for which the tenant pays rent.*

#### Right of First Refusal

*If the tenancy is being ended under section 49.2 and the residential property has 5 or more rental units, the tenant is entitled to enter into a new tenancy agreement for the rental unit that takes effect once renovations or repairs are complete. The tenant must give the landlord notice that they want to be able to exercise this right by completing form #RTB-28 "Tenant Notice: Exercising Right of First Refusal". The tenant must give the completed form to the landlord before vacating the rental unit.*

*If the tenant does not exercise their right of first refusal by entering into a new tenancy agreement on or before the availability date set out in the "45 Day Notice of Availability" form, the tenant has no further rights respecting the rental unit. The landlord may then rent it to another tenant.*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I have considered the issues contained in section 49.1(2) of the Act as follows:

#### Good Faith

I find that the Landlord has an obligation under the Act to provide and maintain a property in a state of decoration and repair that complies with health safety and housing standards required by law and make it suitable for occupation by a tenant.

I accept the Landlord's testimony that the rental property is nearly 60 years old. I accept the Landlord's testimony that some of the building elements in the rental unit are

past their useful life and need to be replaced or repaired. I take guidance from the Tenancy Branch Policy Guideline # 40 Useful Life of Building Elements which provides the useful life of building elements in years. The Guideline provides the following information:

- Useful life of drywall is 20 years
- Useful life of Panel and wiring is 15 years
- Useful life for Re-wiring is 25 years
- Useful life of Electrical is 15 years
- Useful life of Plumbing fixtures is 10 years
- Useful life of Sanitary systems is 25 years

I accept the Landlord's evidence that he has all the permits in place to complete the work and I find that the Landlord had the permits prior to applying for dispute resolution to end the tenancy.

I accept the Landlord's evidence that he has been dealing with leaks coming from the Tenant's unit and this is costly and needs to be repaired. The Tenant's testimony that there was a possible leak in his bathroom 10 -15 years ago and the Landlords maintenance ledger supports that the rental unit has old plumbing beyond its useful life that is in need of repair.

With respect to the Tenant's evidence from the electrician, I note that the letter does not provide any information on the age of the wiring, the life expectancy of the electrical wiring, or its capacity to handle 20 amps and the current need of occupants.

I find that the electrical wiring in the unit is nearly 60 years old and I accept the policy guideline that the useful life of panel-wiring is 15 years and re-wiring is 25 years. I also note that the Landlord plans to upgrade the wiring to better handle increased loads and reduce risk.

I find that repairs are necessary to deal with existing plumbing and electrical issues in the unit and also to meet his obligations to provide and maintain the property in accordance with section 32 of the Act.

The current owner purchased the residential property four years ago and started renovating / maintaining the rental units meeting obligations under section 32 of the Act. I find that the Landlord has a good faith intention to repair and renovate the rental unit. I acknowledge that if this tenancy ends, and even if the Tenant exercises his first right of refusal, the Landlord will be at liberty to rent the unit out to him at market rent. I find that



due to the issues present in the unit, a motivation of receiving a higher rent is not the only reason that the Landlord is performing the repairs/ and renovations in the unit. I note that the Landlord stated they do not want to end tenancies and I note the Landlord offered the Tenant another rental unit at lower than market rent. The Landlord also stated in the hearing that he will honor the previous offer of offering another rental unit at lower than market rent.

### Is Vacancy Required

I have considered whether or not the renovations require the rental unit to be vacant.

I accept the Landlord's evidence that asbestos was found in the drywall tape compound and ceiling texture coat. With respect to the Tenant's submission that asbestos was only found in the kitchen and bathroom, the Landlord testified he is removing most of the drywall in the unit. I find that the presence and removal of asbestos in the kitchen and bathroom and the resulting dust would require that the entire rental unit was vacant for the period of asbestos remediation. I find it would be unsafe to occupy the unit.

I have considered the scope of all the renovations / repairs and I note that all the plumbing in the unit, and all the electrical wiring, and flooring in the unit are being replaced which requires the drywall to be removed on all the affected ceilings and walls. This work includes removal and replacement of plumbing fixtures, including sinks, toilets, and bathtub.

I note that the Landlord is making all these repairs / renovations at the same time and I find that this work will result in a prolonged loss of services and facilities essential for the unit to be habitable.

### Does the Tenancy Need to End?

I have considered if the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

The Landlord provided affirmed testimony that the asbestos removal and other work would take two months or more to complete. The Landlord testified that he bases this timeline on his experience renovating eight other units on the property and has also renovated other rental units in the city.

The Tenant provided letters with opinions that the asbestos removal would take one day, and the other work could be completed in 2-3 weeks.

The evidence before me on this issue of how long the work should take is conflicting. The Landlord provided affirmed testimony that he has completed the same work on eight other units at the rental property and it took between 2- 4 months. The Tenant provided a letter dated November 8, 2021 from a facilities manager and a letter dated September 17, 2021 from an electrician stating their opinions that the work should take from ten business days to 2- 3 weeks at most.

The Landlord provided direct testimony regarding the timeframe to complete the work and the facility manager and electrician did not attend the hearing to provide affirmed testimony. The letter from the facility manager is silent on whether he inspected the rental unit.

After considering the evidence before me, I find that the repairs and renovations are substantial and when considered objectively will require significant time to complete. Based on the amount of work to be completed, it does not seem reasonable that the Landlord could have all this work done in two to three weeks. Completion of the work would depend on many factors such as how many qualified tradespeople were working on the remediation, re-wiring, re-plumbing, re- drywalling, re-painting, flooring, and installation of cabinets, toilets, sinks and tubs and also their availability to attend the unit to perform the required work.

I find that the Landlord provided the better evidence that the renovations and repair work will require 2 - 4 months to complete.

I have considered the evidence before me and I am satisfied that all the considerations set out in section 49.2(1) of the Act apply. The Landlord's application to end the tenancy and receive an order of possession for the rental unit is granted.

I grant the Landlord an order of possession for the rental unit effective April 30, 2022.

The Tenant has a right of first refusal and must give the Landlord notice that they want to exercise this right by completing form #RTB-28 and giving the completed form to the Landlord before vacating the rental unit.

### Conclusion

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 granted.

I grant the Landlord an order of possession effective April 30, 2022. For enforcement the Tenant must be served with the order of possession.

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 1, 2021

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Residential Tenancy Branch