



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      PFR

### **Introduction**

On November 9, 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 tenant confirmed receipt of the landlord's application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence. The landlord testified that they did receive the tenant's evidence, albeit late. The landlord confirmed that they did have an opportunity to review the materials, and did not take issue with the admittance of the tenant's evidentiary materials and proceeding with the hearing as scheduled. Accordingly, the hearing proceeded.

### **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 month-to-month tenancy began in April 2009, with monthly rent currently set at \$1,360.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00, 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 twenty-five years old, and has deteriorated significantly. The landlord testified that they were in the construction business, and like to maintain the buildings. The landlord testified that the flooring is deteriorated, and the landlord preferred to perform full renovations to the duplex, which included repairs to the drywall, cabinets, flooring, and textured ceiling. The landlord testified that the repairs would take approximately two months, but may take longer due to unexpected delays. The landlord testified that due to the nature of the repairs, the home would need to be vacant for that time, and there is no alternative accommodation for the tenant. The landlord submitted letters from contractors confirming that the proposed work would necessitate that the tenants vacate the rental unit.

The tenant questioned whether the repairs were required as they believed the home to be habitable condition, and the proposed repairs to be cosmetic in nature. The tenant also testified that they would accommodate necessary repairs by moving on a temporary basis until the repairs are completed.

The tenant testified that they were unaware of any damage in the rental unit that required repairs, including the drywall. The tenant submitted a detailed history as well as photos of the repairs and painting that they had completed themselves.

The landlord responded in the hearing that they preferred to perform all the repairs at the same time due to difficulties in scheduling trades and obtaining materials for the repairs. The landlord testified that the textured ceiling does not look good, and that they were considering adding more insulation to the front wall. The landlord testified that the wear and tear has been adding up over the years, and have determined that it is time to fix the issues rather than wait.

## **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 tenant, 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 the landlord has failed to establish that any repairs are required to the home. Although the landlord testified that they had an interest in maintaining the home, the landlord must still establish that “*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*”. I find that the landlord has failed to provide sufficient evidence to establish that this is the case.

Although there was reference to fixing damage, I find that the repairs appeared to be more cosmetic in nature than repairs that would be required to sustain the use of the rental unit. If the landlord was unable to wait for the tenancy to end, the tenant expressed a willingness to accommodate the repairs by moving out on a temporary basis. I find that the landlord is not willing to consider this option. The Courts have 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.

I am not satisfied that the landlord has satisfied all the requirements for an Order of Possession to be granted in order to perform repairs or renovations. 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: January 07, 2022

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Residential Tenancy Branch