



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: PFR

Introduction

The landlord seeks an order ending the tenancy and an order granting the landlord possession of the rental unit pursuant to section 49.2(1) of the *Residential Tenancy Act*.

Attending the hearing on January 11, 2022 at 9:30 AM were the landlord, her daughter, and counsel for the landlord. The tenant did not attend the hearing.

Preliminary Issue: Application under section 49.2 of the Act

Section 49.2 of the *Residential Tenancy Act* (the “Act”) was brought into force on July 1, 2021. The underlying purpose of this provision is that a landlord must apply to the Director for an order ending a tenancy (as opposed to issuing a notice to end tenancy) and an order of possession 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.

However, this section is not intended, in my view, to provide an avenue for ending a tenancy when the landlord’s intention is to convert a rental unit to a non-residential use. A landlord may only end a tenancy to convert a rental unit to a non-residential use – as is clearly the case in the present application, as they intend to make the rental unit into a takeout restaurant – by issuing a notice to end tenancy under section 49(2)(b) of the Act for the specific purpose of conversion as set out in 49(6)(f) of the Act.

Section 49(6) and subsection (f) of the Act read as follows:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: [. . .]

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

In other words, the landlord's application assumes (incorrectly) that the renovations and repairs include renovations or repairs made for the purpose of converting the rental unit into a restaurant. They do not. And it is for this reason that the landlord's application for orders under section 49.2 of the Act must be dismissed.

That said, the landlord remains at liberty to issue a *Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit* (#RTB-29) under section 49(6)(f) of the Act. The parties will carefully note that on page two of the notice there is a checkbox referencing the reason "Convert the rental unit to a non-residential use." This reflects a reason to end a tenancy expressly permitted under section 49(6)(f) of the Act.

As an aside, I have considered counsel's submission regarding the building's current municipal zoning, and that the rental unit is in property presently zoned for industrial use. Therefore, it is the landlord's position that the renovations and repairs are not "converting" the rental unit from non-industrial to industrial. The rental unit is already "non-residential."

With respect, however, the landlord's application clearly states that the purpose of the renovations and repairs are for "Changing from single family dwelling to take out restaurant." Moreover, while the property may very well be located within an I-1 light industrial zone under C.V.R.D. Electoral Area "E", *Zoning Bylaw No. 1840*, such zoning itself does not cause the residential nature of the rental unit to become non-residential. It is the use, or primary purpose, of the single-family dwelling as a rental unit that creates its residential use for the purposes of the Act.

In any event, that the property is located within a light industrial zone and that the landlord intends to convert it into a take-out restaurant is a reasonable purpose for intending to end the tenancy and for issuing a notice under section 49(6)(f) of the Act.

Conclusion

The application is dismissed.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 11, 2022

Residential Tenancy Branch