



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for renovations or repairs, pursuant to sections 49.2 of the *Act*.

Tenant R.H. and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants did not attend this hearing, although I left the teleconference hearing

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The landlord testified that the tenants were each served with this application for dispute resolution and evidence via registered mail on October 20, 2021. Tenant R.H. testified that he received the above documents. I accept the landlord's testimony which is supported by tenant R.H.'s testimony. I find that the tenants were served with the above documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that he misspelled tenant E.B.'s first name on this application for dispute resolution. The landlord testified to the correct spelling. Pursuant to section 64 of the *Act*, I amend this application for dispute resolution to state the correct spelling of tenant E.B.'s first name.

Issue to be Decided

1. Is the landlord entitled to an Order of Possession for renovations or repairs, pursuant to sections 49.2 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of tenant R.H.'s and the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately seven years ago with a different landlord and is currently ongoing. Monthly rent in the amount of \$965.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant to the original landlord. The subject rental house is comprised of three suites. Tenant R.H. resides in one of the suites. Tenant E.B. and R.A. resided in one of the suites but have already moved out. Tenant M.S. resided in the third suite but has already moved out.

The landlord testified that he plans on taking the entire house down to the studs and putting in a new foundation. The landlord testified that he plans on making two living units in the house and building a third living unit in the back yard. The landlord testified that he expects to get the development permit this Friday and that the building permit will be issued shortly after that. The landlord entered into evidence an email from the subject rental city dated January 25, 2022 which states:

I've now cleared engineering for your building permit. I might add that the development permit for your property has yet to be issued (engineering is also cleared for DP) and must be issued prior to the building permit.

The landlord filed this application for dispute resolution on October 12, 2021.

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 (PG #2B), 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.

The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made.....

Based on the landlord's testimony, and the January 25, 2022 email, I find that the landlord does not have all the necessary permits and approvals required by law to carry out the renovations or repairs, and did not have the necessary permits and approval at the time this application to end tenancy was made. Pursuant to PG #2B, the landlord was required to have the permits in place at the time this application for an Order of Possession was made. Since the landlord has failed to meet the first test set out in section 49.2(1)(a) of the *Act*, I find that the landlord is not entitled to an Order of Possession.

Conclusion

The landlord's application for dispute resolution is dismissed with leave to reapply.

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: February 24, 2022

Residential Tenancy Branch