



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 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.

The Landlord and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process.

The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they 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

- 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 considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they are a corporate landlord and that there are only four units occupied at the dispute address. That this application seeks to end the tenancy for rental units 202 and 302, located on the southwest corner of the building.

The Landlord provided testimony on the reasons why the tenancy must end. The Landlord testified that they had initially planned to remediate the balconies and replace exterior windows but that when they started the renovations in the unoccupied southeast corner of the building, they discovered wood rot and mould, which led to the need for more extensive renovations. The Landlord submitted 19 pictures of the mould, wood rot and renovation work taken in the other units of the rental building, as well as a building permit into documentary evidence.

The Landlord was asked if they have a contractor in place to perform all the repairs. The Landlord testified that they do have a contractor in place as work has already started on the unoccupied units of the rental property.

The Landlord testified that they have started with work on the south side of the building first and will eventually move to the Northside, where the other two tenancy are located. The Landlord testified that the entire building would take six to 12 months to complete. The Landlord was asked how long the work on rental units 202 and 302 would take to complete. The Landlord testified that they could not say exactly as they would not know the extent of wood rot and mould until they could start the work in those units. Additionally, the Landlord testified that the window replacement takes three weeks.

The Landlord testified that these tenancies must end due to the extensive renovations that may be required, as the exterior window wall, the full interior walls and the ceilings of the other units had to be replaced due to mould and wood rot. The Landlord testified that they believe that the same conditions will be found in units 202 & 302, stating that it is easier and quicker to complete the repairs if the Tenants are out of the rental unit.

The Tenant testified that they do not believe the Landlord is acting in good faith as the Landlord has made several attempts to end their tenancy since purchasing the building.

The Tenants also testified that the Landlord had not completed an inspection of their rental units to confirm the presence of mould and wood rot. The Tenants testified that they do not believe the same mould and wood rot conditions are present in their rental units. The Tenants submitted five pictures of their rental units into documentary evidence.

The Landlord agreed that units 202 & 302 had not been inspected, stating that in their professional opinion, the mould and wood rot was obviously throughout the entire building.

The Tenants testified that they are willing to remain in their respective rental units while the repair work is conducted. Both Tenants agreed that they are willing to work with the Landlord in order to have the renovation work completed, including moving furniture and vacating the rental units for short periods when required.

The Landlord testified that the window replacement takes three weeks and that the full renovation of all the units in the building would take six months to one year. The Landlord testified that they could not say how long the renovations would take in units 202 and 302 as that could not be determined until they started to work in those units but that the work goes faster in empty units.

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 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.

The Landlord has testified that their renovation plans include a full renovation of all the balconies and the replacement of the exterior windows for all the units of the rental property. The Residential Tenancy Policy Guide #2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, Appendix A, states that it is unlikely that replacing exterior windows and balconies remediation would require that a tenancy would need to end to complete the work.

In this case, the Landlord argued that extensive mould and wood rot had been discovered in the other units on the rental property when they started their window and balcony renovation project on other units in the rental property. The Landlord argued that the same mould and wood rot would be found in units 202 and 302 when they start work on those units and that these tenancies need to end due to the likelihood of finding the same conditions in units 202 & 302 that had been found in the other units of this rental building.

I have considered that the Landlord has not hired a contractor to inspect the rental units 202 and 302 to determine the extent of any needed repairs. The Landlord stated they had based this application solely on what had been found during the renovation of the other rental units in this building. A lack of an inspection for these units by the Landlord causes me to question the extent of the work required.

I find that it would be unreasonable to end these tenancies due to the possibility of finding mould and wood rot that may require additional renovations to the ones set out in the work permit that I have before me in these proceedings. Also, I find that the work permit submitted into evidence does not cover the major renovations that the Landlord testified may be required in these units. Although it is unclear if a work permit for this possible work would be required or not, the Landlord has not provided a statement from the local building authority to confirm one way or the other if a building permit is required.

I have also considered the Landlord's statement that it is easier and quicker to complete repairs if the Tenants are out of their rental units. 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.

Additionally, the Tenants have agreed, in these proceedings, that they are willing to work with the Landlord to complete these repairs, agreeing to move furniture and vacating their units for short periods to allow for the completion of the renovations.

After consideration of the evidence before me, I find that the Landlord has provided insufficient evidence that the repairs the Landlord is claiming for in these proceedings are required to these two rental units; that the Landlord has all the necessary permits and approvals required by law to carry out the possible renovations or repairs for mould and wood rot; that the renovations or repairs require the rental units to be vacant; and

the only reasonable way to achieve the necessary vacancy is to end these tenancy agreements.

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 his 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: February 2, 2022

Residential Tenancy Branch