Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 4586 EVERGREEN INVESTMENTS LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

On May 11, 2022, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order of possession for the rental units listed in this application in order to perform renovations or repairs that require the rental units to be vacant.

The matter was set for a conference call hearing. SD, legal counsel, and AR appeared for the landlord. Three tenants attended the hearing, as well as a legal advocate appearing with tenant SA. The attending parties 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. The attending 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 by all those in attendance. All parties confirmed that they understood.

At the outset of the hearing, the landlord's legal counsel confirmed that since this application was filed, several parties named in this dispute had agreed to a settlement prior to the scheduled hearing on July 11, 2022, and the landlord was requesting an Order of Possession for the remaining eight units.

The landlord testified that all tenants were served with the landlord's application and evidence by way of registered mail on May 28, 2022, and additional evidence on June 23, 2022. The landlord testified that one party was served in person. The tenants in attendance confirmed receipt of the landlord's application and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The landlord confirmed receipt of the tenants' evidentiary materials, and that they were read to proceed.

Issue to be Decided

- Does the tenancy need to end in order for the Landlord to perform renovations or repairs that require the rental units 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 application pertains to a rental building containing seventeen total rental units. This application was originally filed by the landlord on May 11, 2022 in order to obtain vacant possession of the occupied rental units in this building in order to perform extensive repairs and remediation to the plumbing throughout the building. The landlord filed this application because they feel that vacant possession is the only possible way to perform the work as asbestos was found to be present in the building, and would need to be removed.

Counsel for the landlord provided the following submissions. At the time of the hearing, there were four vacant units in the building. The landlord had already obtained the required plumbing permit, as submitted in evidence, in order to perform the remediation, and had started with one initial unit to assess the work required. Counsel argued that the invasive nature of the work is supported by the photos of the work already undertaken in this rental unit, which included the removal of walls in order to access the plumbing.

The landlord provided letters in evidence from the architect and plumbing company hired to perform the work. The architect summarized the investigations performed by the company, as well as recommended courses of action.

The architect noted that “a number of minor building modifications by past building managers and trades have compromised aspects of the building’s envelope and fire rating compliance”, and that the “domestic water and plumbing systems have decayed, and as is common with piping material of this nature and age, system failures are settling in, and it is advisable that all supply lines be replaced entire”.

The architect further noted that as “all plumbing distribution is located within wall cavities, we note that during renovation, extensive and invasive work to suites will take place. This will compromise the fire rating integrity of envelopes, and we encourage you to evaluate to which extent tenants should be present during the construction phases. It may be possible to complete one suite at a time, however any main branch lines and tie-ins would require significant disruptions…Maintenance access will have to be created via fire rated access panels. We note that this work will be occurring within tenant evacuation and exit routes and thus urge caution on having tenants in the building during this phase of work…

While not within our area of expertise or competence, we will understand there is asbestos present in the building and certified trades will be required to assess, remove, and restore conditions where this material exists.”

The letter from the plumbing company confirmed that they were hired by the landlord to perform all the necessary plumbing and mechanical upgrades to the building. The author wrote that the “existing plumbing system is in need of upgrading as it is way past its lifespan and leaks and damage are likely present or will cause on-going issues….

The timeframe for work will approximately be four months once the drywall and asbestos has been removed. There will not be any potable water available to any units for the majority of this time”

Counsel argued that the landlord has demonstrated that the tenants will suffer a prolonged loss of essential services and facilities due to these extensive and much needed repairs and remediation work. The building was building in 1970, and water leaks have already affected several units as shown in the photos. The landlord cannot obtain adequate insurance coverage until the repairs are complete, and the landlord is concerned about the risk of extensive losses if the work is delayed any further. The landlord argued that the four month estimate is once all the asbestos is removed and remediated. The landlord testified that there are no available and vacant units available for the remaining eight tenants to temporarily relocate to. The landlord provided a letter dated April 4, 2022 from their insurer stating “As you know, we are in a very difficult and hard insurance market…without satisfactory and full updates on this building, underwriters are not interested in providing full coverage. In order to obtain coverage for Water Damage/Water Losses, underwriters will want evidence of the plumbing has been fully updated…As soon as you have evidence of these updates, please forward to me so I can arrange property coverage going forward.”

The tenant SA argued that the landlord had already started repairs while the tenants are still there, which supports the fact that the landlord does not require complete and vacant possession of every unit in the building. SA also argued that the landlord has not provided sufficient evidence to support that asbestos remediation was required. SA argued that there are individual shutoffs in each unit, and the landlord is able to perform the repairs in stages. The landlord responded that they have only started the deconstruction stage, and have yet to undertake any repairs or remediation work.

SA also argued that the landlord has not done a full assessment of each unit in the building, and notes that they do not have any water damage or issues in their own unit.

WF, another tenant, testified that they worked for the previous owner of the building, and similar work was completed in another building which WF considered a “twin”. WF testified that the twin building was re-piped without having to end any tenancies, which took the landlord approximately a year to complete. WF also argued that the landlord has not sufficiently supported that asbestos removal or remediation was required.

The landlord responded that the tenants were not experts, and did not have the expertise or authority to speak to whether the scope of the work to be completed would be identical or similar to the work that will be done in this building.

PT, legal advocate for SA, testified that they had attempted to reach the landlord for settlement as many other tenants were approached by the landlord, but the landlord was not willing to negotiate. SA believes that the remaining eight tenants were playing substantially lower rent, and this was an attempt for the landlord to obtain substantially higher rent.

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.

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.*

<u>Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy</u>

> *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.*
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> *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 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 tenancies to end. In consideration of the evidence before me, I am satisfied that extensive repairs and remediation is required in the building, and supported by the documents provided by the professionals hired to perform this work. Although the tenants have suspicions that the landlord's true motive was to obtain higher rent, it is undisputed that the building is aged, and overdue for significant repairs, especially since there has been damage in the building already. I am also satisfied that previous alterations by the previous owner have put the building and residents at significant risk, and the current landlord has obligations to ensure that these alterations are addressed to meet safety requirements. The remaining question is whether the landlord truly requires complete and permanent vacant possession of the remaining eight units in order to undertake and complete this work.

As noted above, the landlord cannot choose to seek vacant possession simply 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".* In this case, I find that the landlord had provided detailed evidence to support that the work would take at least four months, not including the amount of time for asbestos removal and remediation. As I am not satisfied that the landlord had provided detailed information related to the asbestos removal, I am unable to determine how much time that would take, if asbestos removal was truly required. I will instead focus on the repair and remediation process itself, which I understand will take at least four months to complete, which involves the contractor's ability to perform the work with significant disruptions to essential services such as running water for an extensive period of time.

I have noted that the architect did state that “it may be possible to complete one suite at a time, however any main branch lines and tie-ins would require significant disruptions”. I am satisfied that the landlord does have the option to perform the required work in stages, but not without considerable risk.

As supported by the architect’s observations about the tenant safety, as well as the letter from the landlord’s insurer, the landlord’s sense of urgency is justified. Without adequate insurance coverage, the landlord is at significant risk. Although one of the tenants did provide credible testimony as to their own personal experience of how the landlord was able to undertake the same or similar work in an identical building without evicting the tenants, the tenant did not provide specific details of the work undertaken. As many factors would have changed since this similar work was completed, and as specific details were not provided, I am unable to determine whether the work and external environmental factors were indeed identical. As noted by the insurer, the trend has changed where insurance companies now face more and significant claims, and now have more stringent requirements to obtain full coverage, if these companies are even interested at all.

Although I have significant sympathy for the tenants affected by this situation, I find that the landlord has met the significant burden of proof to support that this application was made in good faith, and that they truly require complete and vacant possession of the rental units in order to complete required and necessary repairs in a timely manner. I have weighed the rights of the tenants and the landlord’s obligation to consider alternative options, but I am satisfied that the landlord does not have any other choice as the landlord is already facing the threat of significant losses and damage due to the lack of insurance coverage until the work is completed. I do not find that the landlord has a reasonable alternative.

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 remaining tenancies and receive an order of possession for the rental units is granted.

In accordance with section 49.2(4), I grant the Landlord an order of possession for the remaining rental units effective December 31, 2022.

The Tenants have 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.

In accordance with section 51.4 (1) A tenant who receives an order ending a tenancy under section 49.2 *[director's orders: renovations or repairs]* is entitled to receive from the landlord on or before the effective date of the director's order an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Conclusion

The Landlord's request for an order of possession for the rental unit in order to perform renovations or repairs that require the rental units to be vacant is granted.

I grant the Landlord an order of possession effective December 31, 2022. For enforcement the Tenants must be served with the order of possession. Should the tenant(s) and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 11, 2022

Residential Tenancy Branch