



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of vacant possession of the rental unit to perform renovations or repairs.

The Tenant, the Landlord, and an agent for the Landlord, C.A. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant said she received the Notice of Hearing and evidence from the Landlord in May, and another set of documents from the Landlord in August; however, this latter evidence is not before me, and therefore, I cannot consider it in making this Decision.

The Tenant said she served the Landlord with the submission she made to the RTB the day before and the day of the hearing. I advised the Tenant that pursuant to Rule 3.15, I am not authorized to consider her evidence. Rule 3.15 states: "...the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." [emphasis added]

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 20, 2021, with a monthly rent of \$1,700.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$850.00, and no pet damage deposit.

The Landlord explained that he applied to end the tenancy, because there is insufficient sound suppression between the upper and lower suites in the residential property. In the hearing, the Landlord said:

The goal in all of this is to make this a suite that is livable for both the Tenant and Landlord. So basically, there's additional things in the ceiling that I'll do while the ceiling is open. I've considered a number of options to find the best solution for everyone. This is not covered by home warranty; it's mostly for the enjoyment of living of our family.

We're doing the most invasive type of reno. We're removing the entire ceiling and closets. We'll reinforce the joists – there's a lot of movement in those joists - the quality wasn't there. A lot of movement in the floor affects sound. From there, we'll do it in two folds; there is level 1 – 5 in sound suppression, and we want level 5.

I can't just hire someone outright to do the work; I have to take off time to do the work myself, to afford it. I will do a lot of demolition with the contractor, depending on the timeline – it's a busy life with two young kids and an active job. I do a lot of travelling. It's not like I could spend countless hours. The timeline if I had all the money in the world - I could do it four weeks. But I am adding sound suppression, drywall,... for that period of time, the best case may be six weeks, or probably more like eight to twelve weeks, depending on what happens there.

We have invested thousands of dollars in runners and carpets, changing our lifestyle, trying to respect the fact that the sound suppression is minimal to nothing that our Tenant hears a lot – our floors are all hardwood, too. In the day, you use carpet, but now every step you take, even if it's tippy toe, if you drop something. That level of circumstances makes it uncomfortable for the Tenant and the Landlord. My family had been living in these conditions since June 2021. I have submitted a lot of evidence that it is uncomfortable for [the Tenant].

There is also the verbal complaints; I have come across 50+ complaints from the Tenant in over a 14-month period. That's 3.74 times a month. Both Parties are living under conditions that are uninhabitable. We have tried to mitigate the sound, but it is impossible to meet acceptable standards without doing this renovation.

The relationship between Landlord and Tenant – we cross each other and see each other - and the relationship is heavily damaged. Whether or not the renovation occurs or not, both Parties have been gravely damaged in that sense, which is a compelling factor in this as well.

The Tenant responded:

I am going to agree that the sound suppression is pretty poor in this suite. I hear almost everything. I appreciate that he's looking into making these renovations, but I'm not convinced that it would require me to vacate the suite completely. Based on the quotes he included in his package, I'm not seeing where the - it's a lot of money - but what he's saying he's going to do with what's on the quotes are different [although the Tenant did not say how].

I was away last year for four weeks, and this year for three weeks. I have family in Ontario and I visit them. I would have liked them to do that work while I'm gone. There was never a conversation to have a collaborative approach. I feel that they're just trying to get rid of me, because of the damage to the relationship. I'm the one complaining; they've called me too sensitive and said that I should move. They're using this as a way to get rid of me.

I asked the Tenant if she could consider living elsewhere while the renovation work is being done, and then possibly move back in. The Tenant replied:

It's way too expensive, and I don't believe it will take that long to do. The quotes

say six weeks, and I've spoken to contractors and the answer is 3 – 4 weeks. And he's never been in here to assess it. They don't know what it's like between the two levels. We don't know how long it will take.

I've submitted as evidence that rentals are very limited in [the city], and prices have gone up..., it's going to be a huge cost. I could have been away for six weeks this summer; I could have worked from Ontario. But being out of the loop makes it hard to make any plans or decision.

The Landlord said:

Last year when she went away, we weren't in a position to consider sound suppression. Later we've done everything we can to suppress sound, and she continued to complain four times a month. We had verbal discussions that there are options about the sound suppression. The fact of the matter, we did come into the suite to look, and I was asked a series of questions by a contractor. Trying to get a contractor to do work for such a small job is next to impossible. Whether it takes two weeks or ten weeks – we live out of town - which makes it harder.

The other point, I'm trying to make it as cheap as possible, because the funds aren't just sitting on a shelf for us. We want to rent it to someone, but my kids are literally scared of [the Tenant]. It has been almost intolerable, but the sound's intolerable for her, too.

We do understand that the rental market is challenging. We had over 30 applicants. We met each group individually. We noticed that there were sound problems at that time. We brought each group into the areas and had the kids run around upstairs. We knew we have an active family We live a normal life like anyone with two young kids.

That has been challenging, and being told that we're doing this on purpose – stomping and pounding on purpose. You tell a 7-year-old special needs boy that he can't run across the floor - that's pretty difficult.

We did go upstairs. We met [the Tenant] and her daughter, [J.], I felt that we did the highest level of due diligence with that. We are here for some reason. Maybe we have heavy feet or the [the Tenant's] sensitivity level is really high.

The Tenant said:

There's a couple things in those statements. First, saying that on average I'm complaining four times a month - when I have to ask you multiple times on the same instance, that's not... I'm not sure where this is coming from

Second, if you look at my complaint, I don't care about children running around during reasonable hours. I've not accused your kids of stomping on purpose. It's when it's done at unreasonable hours when my daughter is trying to sleep, when I'm trying to sleep as a single mom. I need enough sleep. It's stomping at 4 45 in the morning - not during the middle of the day. It's during unreasonable hours. I don't complain about it during the day at all. I understand that.

I was never brought down to the suite and had someone upstairs running. The first time seeing it was with [the Landlord], and the second time with his wife, but never with kids running upstairs. I asked about the sound proofing and I was told that there was sound proofing and that they go to bed at 9 p.m.

But also, you claim you had all these options, but you knew I had a 5 year old – they have to go to bed early. She's right underneath the kitchen, she'll hear when you're slamming cupboards. It's frustrating for you, and sorry that I have caused the kids trauma, but it's always at times that are unreasonable. You could have taken someone who likes to party and be up to 1:00 a.m.

The Landlord went on to itemize instances in which the Tenant complained during the day and evening – inside “reasonable” hours for standard home noises. The Tenant replied, questioning the Landlord's details. I find that the Parties clearly have animosity toward each other, given the events of the tenancy over the last 15 months. However, the issue before me is whether the Landlord has grounds to evict the Tenant in order to have vacant possession to perform repairs or renovations.

The Landlord submitted an email he received from the City in answer to the Landlord's enquiries about any permits needed for the planned renovation. In the reply from the City dated April 19, 2022, the City's Building Inspector, N.J., said the following:

Hello [Landlord],

Based solely on the information given in your email regarding the removal of the ceiling (gypsum board) in the basement storey and adding insulation for sound control, a building permit will not be required.

If you have any further questions please feel free to ask.

Thank you,

[City]

[N.J.], RSE | Building Inspector | Development & Regulatory Enforcement
Services

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Policy Guideline #2B: “Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use” (“PG #2B”), clarifies the requirements of section 49.2 of the Act. Section 49.2 states:

Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]*, 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.

...

(3) 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 subsection (1) apply.

(4) An order granted under this section must have an effective date that is

- (a) not earlier than 4 months after the date the order is made,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

PG #2B states:

If an arbitrator is satisfied that all of these criteria are met, then they must grant an order ending the tenancy and issue an order of possession. Such an order must not end the tenancy earlier than 4 months after the date it was made.

I find from the evidence before me, especially from the Parties' testimony in the hearing, that the residential property has insufficient sound suppression between the residential units. I find that the Landlord attempted to improve this problem by purchasing carpets and pads to reduce his family's noise from transferring to the rental unit below them. However, given the Tenant's testimony about the problem continuing, I find that the Landlord's measures were insufficient to resolve the problem. As such, I agree that additional steps must be taken to ensure the quiet enjoyment of any inhabitant of the rental unit. I find that the Tenant has not provided sufficient evidence to indicate that the Landlord is not acting in good faith in this regard.

The Landlord's undisputed evidence is that there are no permits needed by the City for the planned renovations. Further, I find that the Parties have both endured difficulties with sound transference between the suites in the residential property, even when extra carpets and pads were used upstairs. As such, I agree with the Landlord that the only option is to renovate the residential property, in order to palpably reduce this problem. I find that without these renovations, the rental unit is not suitable for rental purposes.

I find it is consistent with common sense and ordinary human experience that the dust, debris, and general uncleanliness of removing a ceiling from a residential unit would make the rental unit unsuitable for habitation for a lengthy period of time. It would also decrease the padding and increase the sound transfer between the units.

Further, the Landlord testified about:

- the extent of the renovations needed;
- the difficulty getting trades, due to the remote location and the pandemic;
- the unaffordability of hiring someone to do it for the Landlord; and
- the Landlord's limited availability to do the work, himself.

Based on these factors, I find that the timeline to complete the project is greatly uncertain – there is no way of knowing how long the Tenant would have to be elsewhere during the renovations, if she could find temporary housing. Based on these considerations of the evidence before me, I find that renovations are needed in the residential property, that the rental unit needs to be vacant during the renovations, and that the only reasonable way to achieve this is to end the tenancy.

Accordingly, I award the Landlord an **Order of Possession** for **December 31, 2022, at 1:00 p.m.**, which is four months from the date of this Decision and Order, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Conclusion

The Landlord is successful in his Application for vacant possession of the rental unit to perform renovations or repairs, with an Order of Possession for the Landlord. The Landlord provided sufficient evidence on a balance of probabilities that he needs vacant possession of the rental unit in order to do needed renovations or repairs.

Pursuant to sections 49.2 and 55 of the Act, I award the Landlord an **Order of Possession** dated **December 31, 2022, at 1:00 p.m.** This Order must be served on the Tenant by the Landlord, if necessary, and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 29, 2022

Residential Tenancy Branch