



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOUGLAS RIDGE INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

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 section 49.2. This hearing convened on August 9, 2022, and an Interim Decision dated August 17, 2022 was drafted and should be read in conjunction with this Decision.

Counsel for the landlord ("Counsel"), landlord agent A.R., tenant G.C., tenant S.H., tenant M.F., and an agent for tenant M.F. (agent B.F.) 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 landlord called witness C.C. who affirmed to tell the truth.

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

Preliminary Issue- Service

Counsel for the landlord submitted that each tenant was served with the landlord's application for dispute resolution via registered mail on April 22, 2022. Registered mail receipts for same were entered into evidence. Counsel for the landlord submitted that none of the tenants picked up their registered mail packages and so the landlord personally served the tenants or posted the landlord's application for dispute resolution on the tenants' doors.

Tenant G.B., tenant, S.H., and tenant M.F. all confirmed receipt of the landlord's application for dispute resolution, though none could recall on what date they received

it. No party disputed service. I find that all of the named tenants were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was confirmed, and no service issues were raised.

Counsel for the landlord submitted that the landlord's additional evidence package was served on each tenant named in this application for dispute resolution either in person on July 22, 2022 or via posting on July 22, 2022. Tenant G.B., tenant, S.H., and tenant M.F. all confirmed receipt of the landlord's additional evidence package and testified that they had reviewed the evidence prior to today's hearing. None of the tenants could recall the specific date they received the landlord's evidence. I find that all of the named tenants were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was confirmed, and no service issues were raised.

None of the named tenants entered evidence for consideration in this application for dispute resolution.

Issues to be Decided

Is the landlord entitled to an Order of Possession for renovation or repair, pursuant to section 49.2 of the *Act*?

Background and Evidence

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

Counsel for the landlord submitted that the landlord is seeking an Order of Possession for each unit listed in this application for dispute resolution because the renovations and repairs required for each unit and the entire building are so extensive that they cannot be completed with the tenants residing in their units.

Pursuant to the August 17, 2022 Interim Decision, the landlord entered into evidence the type of tenancy each tenant named in this application for dispute resolution currently

has with the landlord (month to month or fixed term) and the start of those tenancies, and the day of the month rent is due as follows:

Tenant	Day Rent is Due	Date Tenancy Commenced	Term of Tenancy
G.C.	First day of month	1-Apr-16	March 31, 2017 then continue month to month
S.H. and T.H.	First day of month	1-May-14	April 30, 2015 then continue month to month
M.F.	First day of month	1-Aug-02	Continues month to month

Counsel for the landlord submitted that the following renovations are required in every unit of the subject rental building, including each of the rental units currently occupied by the tenants named in this application for dispute resolution:

- re-framing,
- re-wiring,
- duct replacement,
- pipe replacement,
- bathtub and surrounds replacement,
- water line replacement,
- drywall replacement,
- kitchen fixture and cabinet replacement,
- fire separation installation, and
- abatement of asbestos.

Counsel submitted that:

- asbestos affects the lungs when it is inhaled and requires professional abatement.
- The asbestos removal company recommended units be empty during abatement.
- The units in the subject rental property will be left in an uninhabitable condition when the renovations and repairs are completed because the plumbing and wiring will leave the units without water and electricity for months.
- The repairs and renovation work will take approximately 5-6 months per unit.

Counsel submitted that above-described work has already begun on empty units and that as the work progressed additional issues have been discovered that the landlord has been ordered by the subject rental city to rectify. Counsel entered into evidence an email from the subject rental City to the architect in charge of the renovation/repair, dated November 16, 2021 which outlines additional work the landlord must undertake.

The November 16, 2021 email is reproduced as written below:

I have completed a cursory review of the supplied documents and plans for the proposed renovations at the apartment building. There are a few outstanding items to be addressed prior to the permit being issued. The items to be addressed are shown below.

A site visit to the building showed that there are a lack of fire separations, fire stopping, fire blocking, sound transmission class ratings.

Additionally I was informed that there were to be smoke alarms installed now as well as some other upgrades to the unit electrical. The fire department has informed me that the existing fire alarm system is old and needing to be replaced. The schedule B for architectural is not acceptable as it crosses off many things like fire separations, and fire stopping. Provide a complete written scope of all proposed work. Provide a written break down of costs of construction including everything including engineering and architectural design and inspection costs, demolition costs including hazardous material abatement, reframing, wiring, plumbing, and mechanical costs.

Architectural drawings are to detail upgrades to fire separations that are exposed for all aspects including fire separation and sound transmission class ratings.

Architectural drawings to detail new mechanical venting chases to the roof.

Architectural drawings are to detail how the required drywall will be installed prior to the tub installation in a space that is not big enough.

Details C1 and C2 speak about studs when it is a floor assembly.

Provide a copy of the referenced ULC listing.

The plumbing drawings do not show calculations to show that the existing water service demands are BC Plumbing code compliant for both velocity and size.

Supply sealed electrical drawings for the building upgrades including the fire alarm systems. This will require an electrical engineer's schedule B as well as a schedule A from a coordinating registered professional. A new water service and fire sprinkler system may be required.

Counsel submitted that after a visit from the fire department, the landlord received a letter from the fire department dated March 30, 2022 which states that there is “a hazard to life or property in the event of a fire and must be corrected for immediate compliance.” The letter goes on to require the landlord to upgrade the fire separation system and install a fire watch.

Counsel submitted that the City of the subject rental property will not grandfather in the old water line to the building and has ordered that the landlord replace the water line with a line that meets the current code. Counsel submitted that the City also requires the installation of a sprinkler system. To support the above testimony counsel presented an email dated February 1, 2022 from the engineering consultant hired by the landlord to the landlord which states:

It seems the city will not grandfather the 2” water service line – and they want domestic water line to be by the current code we will need to have larger pipe size. We will leave the change until you decide one [sic] the sprinkler as you may need to upgrade the whole service anyway then we can upgrade both at the scam[sic] time. Please let me know

Counsel entered into evidence a letter from abatement professionals dated July 19, 2022 which states:

This serves as a correction and update to my previous letter dated April 5th 2022.

[The subject rental building] contains asbestos in materials that are being remediated, such as drywall joint compound throughout the building. Asbestos is a highly dangerous fibre that affects the lungs when inhaled, [the abatement company] have been hired to handle and remove it in a safe manner as per Work Safe BC regulations and guidelines. [The abatement company] recommends that no other work is to be conducted before it has cleared the suites of asbestos and issues a completion letter. Correction: It is recommended that units stay vacant until full renovation is completed as once the ACM abatement and tear out of unit cabinets and bathrooms (tubs and walls) are done, kitchens and bathrooms are left in an uninhabitable condition.

Counsel submitted that the architect in charge of the renovations/repairs (witness C.C.) requires vacant possession of the subject rental building to complete the repairs.

Counsel entered into evidence a letter from witness C.C. to all existing tenants which states:

The existing building is undergoing a major renovation which includes the replacement of the hot water distribution system with a centralized hot water boiler, electrical work to the alarm system, corridor and unit lighting, unit improvements to the kitchen and bathrooms and replacement of all exhaust ducting systems; therefore this will affect not only units but the common areas such as stairwells and corridors, which will impact exiting to and from the building.

During the permitting process and additional investigation of the existing conditions of the units, it was determined that there are fire separation issues with the exhaust system. To address this issue and to meet the current building code, we have to gain access to each and every unit to terminate all existing exhaust system and fire proof all penetrations as well as providing new individual ducting runs.

Due to the extent and complexity of this renovation, we deem the current building to be unsafe for inhabitation during the demolition and reconstruction period. The entire building needs to be vacant for the duration of the reconstruction and upgrades.

Counsel called witness C.C. who provided affirmed testimony. Witness C.C. testified that he is the architect of record for the renovation/repair at the subject rental building.

Witness C.C. testified that each unit requires updated kitchens and bathrooms. Witness C.C. testified that as the landlord has begun the renovation process it has been found that many areas of the building are not up to code and the landlord has been ordered to rectify those issues. Witness C.C. testified that the ventilation system and fire blocking systems are not up to code and must be brought up to code.

Witness C.C. testified that the landlord must also install a new domestic water distribution system which affects every unit and that every unit also needs upgraded electrical and fire blocking.

Witness C.C. testified that when the currently occupied units are renovated the fire exists will be compromised while the work is being completed because parts of the exit

corridors will need to be removed and will not be a fire rated component which is highly dangerous.

Witness C.C. testified that each unit needs to be vacant for the work to be completed because plumbing will not be operating, there will be no mechanical components in the units and the electrical will also be changed. Witness C.C. testified that it is highly unsafe for tenants to remain in the units during renovation.

Witness C.C. testified that the landlord currently has the correct permit for the required work to be completed. Counsel entered into evidence a building permit for the subject rental building, which was issued to the landlord on March 15, 2022 and a receipt for that building permit in the amount of \$12,225.00. The landlord filed this application for dispute resolution on March 22, 2022.

The tenants and agent in attendance were provided with an opportunity to cross-examine witness C.C. None of the tenants or the agent elected to do so.

Counsel submitted that section 49.2 of the *Act* allows a landlord to apply for an Order of Possession if the following four criteria are met:

- (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; and
- (d)the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Counsel provided submissions on each of the above listed criteria.

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

Counsel submitted that the landlord intends in good faith to renovate and repair the rental unit and that the landlord has all the necessary permits and approvals required by law to carry out the renovations and repairs.

Counsel submitted that the building permit in evidence proves that the landlord has the permits and approvals required to carry out the renovations and repairs.

Counsel submitted that the subject rental City informed the landlord via email dated April 26, 2021 of all the requirements that would be needed to proceed with the renovations. Counsel submitted that the landlord has followed all of the requirements set out in the April 26, 2021 email which evidences the landlords honest intent to complete the renovations and repairs.

Counsel entered into evidence the April 26, 2021 which states:

.... You will need to retain an Architect who will coordinate the application, registered professionals, and building permit requirements during construction. If you have any questions, please call.

Counsel submitted that the landlord has retained an architect (witness C.C.), has hired other professionals such as an asbestos abatement company and has obtained the required building permit.

Counsel submitted that section 32(1) of the *Act* states:

A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Counsel submitted that the landlord has a statutory obligation to maintain the property. Counsel submitted that the renovations and repairs planned will allow the landlord to remain compliant with section 32(1) of the *Act*.

The renovations or repairs require the rental unit to be vacant

Counsel submitted that the renovations/repairs require vacancy and that any period of time in which the unit must be vacant is sufficient to meet the section 49.2(1)(b) vacancy requirement.

Counsel submitted that the units which were vacated earlier and in which the renovations/repairs were started in March 2022 are still under renovation and are not yet ready for habitation. Counsel submitted that if everything goes according to plan the units that began renovation in March 2022 will take a total of five to six months to complete. Counsel entered into evidence photographs of the above-described renovations.

Counsel submitted that the highest level of asbestos contamination has been found in the ceilings of the units and that this requires expensive and extensive abatement which requires vacant possessions as does the extensive electrical and plumbing renovations.

Counsel submitted that the fire blocking that is required between units will require the drywall to be taken down between the units and that this will also require vacant possession.

Counsel submitted that the plumbing work requires the complete shut off of water and that no sinks, toilets and bathtubs will be functional.

Counsel entered into evidence a building inspection report obtained by the landlord for the subject rental property. The building inspection report is dated April 12, 2021.

Counsel submitted that the building inspection report states that the landlord should consider replacing the following items:

- Original copper pipes,
- Faucets and fixtures,
- Hose bibs, and
- Hot water tanks.

The building inspection report defines the terms 'good', 'fairly good', 'fair', 'reasonable' and 'poor' used in the report as follows at page 8 of the report:

Terms used in this report include **Good** which is used to describe any component or finish considered to be in brand new like condition. **Fairly Good** indicates a component or finish which shows some normal wear and tear for its age and remains in operational condition, without any need for immediate repairs or servicing. **Fair** indicates a component or finish that remains basically operational but shows some heavy wear and tear and requires updating of all normal preventative maintenance possible before it can be considered reliable again for the duration of its normal expected service life. **Reasonable** indicates a component or finish that remains just barely operational and has reached a state of condition where, replacement rather than further repair should be anticipated at any point in time. The term **Poor** relates to any component or finish seen to be in a non-functional state of condition and requires immediate replacement and/or significant repair.

The building inspection report states on page 31:

Original copper plumbing has now reached an age and condition where pinhole type leaks can develop and its replacement should be anticipated within the next 5 years or so.

The building inspection report states on page 36:

All faucets and fixtures inspected vary from reasonable to fairly good condition with various chipped enamel sinks to be repaired or replaced.

The building inspection report states on page 37:

The hose bibs on the property are in fair condition with missing handles to be replaced and they do not have any back-flow prevention installed and are not frost protected. One of these hose bibs has been extended with no insulation on the water pipe and it will require to be drained during freezing weather conditions to ensure no damage.

The building inspection report states on page 34:

Each suite in the building has its own electric powered hot water tank, each installed on drain pans with visible drains. The tanks appear to have 150.0 Litre

capacity and vary from reasonable to fairly good condition with some units that need immediate replacement, along with tanks that are under a year old. The expected service life for these types of tanks is between 10 and 12 years. There is approximately 25% of the tanks that are near or past their expected service life and replacement should be anticipated fairly soon.

The building inspection report states at page 12:

All branch circuit wiring visible at accessible areas, electrical panels and open junction boxes was noted to be copper. All wiring seems to be in fair to fairly good condition however, various electrical repairs are required. Some open splitter boxes, electrical junction boxes and receptacles seen need covers installed to ensure there is no exposed wiring.

The various exterior wall mounted light fixtures were noted to be in fair to fairly good condition, with various minor repairs required to seal the junction boxes from moist weather. Some are also missing fixture covers which need to be replaced. The interior lighting and switches inspected are all in fair to fairly good condition with missing fixture covers to be replaced and some damaged fixtures in common areas to be replaced and repaired.

Counsel submitted that the building inspection report shows that there are a number of plumbing and electrical issues that require fixing in the near future and the landlord is taking the initiative to repair them before major problems arise.

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

Counsel submitted that the repairs are necessary to prolong and sustain the use of the rental units and building. Counsel submitted that the health and safety of the tenants is the most important thing and that the repairs and renovations including the fire blocking will improve safety for future tenants.

Counsel submitted that in order to obtain insurance for the subject rental building, it requires upgraded plumbing and electrical work. Counsel submitted that organizing insurance is challenging and all insurers have asked for updates on the roof, heating and plumbing. Counsel entered into evidence a letter from the landlord's insurance company dated April 4, 2022 which states:

As you know, we are in a very difficult and hard insurance market. Organizing insurance from insurance companies for frame apartment buildings continues to be challenging. There is no slowdown in this hard market as there is still a growing trend in the frequency of water losses, severe fire and weather related losses. These claim trends have resulted in more being paid out by insurers than they have collected in premiums. The lack of available capacity from insurers continues to be the greatest problem of insurance in the apartment building sector. All of the insurance companies I have approached for [the subject rental building] have asked for specific updates on the roof, electrical, heating and plumbing. 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 the plumbing has been fully updated. Underwriters will also want updates to the electrical as well.

As soon as you have evidence of these updates, please forward to me so I can arrange property coverage going forward.....

The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

Counsel submitted that the only reasonable way to achieve the necessary vacancy is to end the tenancy because of the significant extent and duration of the required repairs and the danger to health and safety caused by asbestos removal, fire safety corridors and the removal of basic services such as plumbing and electricity.

Tenants' Response

All tenants in attendance were provided with a full opportunity to respond or reply to the landlord's testimony, only tenant M.F. responded. Tenant M.F. testified that one of the plumbers working on a different unit told her that the plumbing repairs could be done in a few days and she could move back in after them. No documentary evidence was provided to support the above testimony.

Counsel submitted that tenant M.F. has not provided any evidence to support her statement. Tenant M.F. testified that the plumber just said it in passing and that she shouldn't have said anything.

Analysis

Section 49.2 of the *Act* states:

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.

(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(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.

Counsel correctly set out the four point test to be satisfied under section 49.2(2) of the Act, for an Order of Possession to be granted. I will go through each in turn.

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

Residential Tenancy Branch Policy Guideline #2B states:

“Permits and approvals required by law” can include:

- demolition, building or electrical permits issued by a municipal or provincial authority;
- a change in zoning required by a municipality to convert the rental unit to a nonresidential use; or
- a permit or license required to use it for a new purpose.

....

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. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals...

I find that the landlord obtained a valid building permit before making this application for dispute resolution as the building permit was issued on March 15, 2022 and this application for dispute resolution was filed on March 22, 2022. I find that the landlord has also complied with the subject rental City’s requirements outlined in the April 26, 2021 email as evidenced by the testimony of the landlord’s architect and the letter from the asbestos abatement company. I find that the landlord has obtained the building permit, hired registered professionals to complete the work and has hired an architect to oversee the project. Pursuant to my above findings, I find that the landlord has proved

that the landlord has all the necessary permits and approvals required by law to carry out the renovations/repairs.

Residential Tenancy Branch Policy Guideline #2B states:

....In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 (section 32(1) of the RTA).

In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 137

None of the tenants or the agent in attendance alleged that the landlord was not acting in good faith. Based on the building inspection report entered into evidence, the photographs of the repairs/renovations already started and the professionals hired to complete the stated repairs/renovations, I find that the landlord is taking their section 32 obligation to repair and maintain the subject rental property seriously. I find that the landlord honestly intends to complete the renovations and repairs stated, to keep the subject rental property in good condition. I find that the landlord has taken considerable and reasonable steps to complete the renovations and repairs described earlier in this decision.

Pursuant to my above findings, I find that the landlord has satisfied the requirement of section 49.2(1)(a) of the *Act* because they have obtained the necessary permits and approvals required by law and are acting in good faith.

The renovations or repairs require the rental unit to be vacant

Residential Tenancy Branch Policy Guideline #2B states:

Section 49.2 allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. Any period of time in which the unit must be vacant is sufficient to meet this requirement.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”.

Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

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)

Based on the submissions of counsel and the July 19, 2022 letter from the asbestos abatement company, I find that vacant possession is required due to the extensive asbestos remediation required in the units. I find that it would be unsafe for the tenants to live in the unit during asbestos remediation.

Based on the building inspection report, the testimony of witness C.C., the November 16, 2021 email and the March 30, 2022 letter, I find that the landlord has proved, on a balance of probabilities, that domestic water line and copper piping require replacement in the near future, electrical work is recommended to be completed and extensive fire protection work is required. Based on the testimony of witness C.C. I find that the rental

units will be uninhabitable while the above work is completed as water and electricity will be turned off and drywall needs to be removed between units.

Pursuant to my above findings, I find that the landlord has satisfied the vacancy requirement of section 49.2(1)(b) of the *Act*.

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

Residential Tenancy Policy Guideline #2B states:

Renovations and repairs are important to the life cycle of a building. As buildings age this work is necessary to ensure the rental unit and the building in which it is located remain safe for the tenants. Some examples of these necessary renovations or repairs include:

- Undertaking seismic upgrades
- Updating electric wiring to code
- Installing or replacing a sprinkler system to ensure the building meets codes related to fire safety

Based on counsel's submissions, the building inspection report and the testimony of witness C.C., I find that the building requires repairs/updating to the plumbing, wiring and fire safety systems. Pursuant to Residential Tenancy Policy Guideline #2B, I find that the above repairs/renovations are important to the life cycle of the building and are necessary to prolong or sustain the use of the rental unit and building. Pursuant to my above findings, I find that the landlord has satisfied the requirement of section 49.2(1)(c) of the *Act*.

The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

Residential Tenancy Policy Guideline #2B states:

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

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.

On the other hand, 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.

If the renovations or repairs that require vacancy can be completed within 45 days or less and the tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy. The right of first refusal (see below) contemplates new tenancy agreements being provided at least 45 days before the renovations or repairs that ended the tenancy are completed. If the timeframe is longer than 45 days, it may be unreasonable for the tenancy agreement to continue even if the tenants are willing to make alternative living arrangements. The longer the timeframe, the less likely the tenant can be considered to retain the rights of possession and use contemplated for tenancy agreements, as established in the RTA, and for which the tenant pays rent.

Based on all the evidence of the nature and extent of the planned renovations involving electrical, plumbing, fire protection and asbestos removal, and the timeline for those repairs completed in other units I accept counsel’s submissions that the renovation will last approximately five to six months.

I find that the length of the required renovations reasonably requires vacant possession of the subject rental property while the plumbing and electrical are repaired/replaced, fire blocking and suppression measures are installed and while extensive asbestos

remediation takes place. Given the nature and extent of the renovations I find that it would be unreasonable for the tenancy agreement to continue even if the tenants were willing to make alternative living arrangements because the length of time for the renovations is too long for the tenants to have retained their rights of possession and use contemplated in their original tenancy agreements.

Pursuant to section 49.2(3) of the *Act*, I find that since I am satisfied that all the circumstances in section 49.2(1) of the *Act* apply, I must grant the landlord an Order of Possession for all of the rental units in this dispute.

Section 49.2(4) of the *Act* requires 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.

Based on the landlord's evidence submitted pursuant to the August 17, 2022 Interim Decision, I find that all tenancies are currently month to month tenancies and that rent for all of the tenancies is due on the first day of each month.

Pursuant to section 49.2(4) of the *Act*, I find that the landlord is entitled to an Order of Possession for all units listed in this application for dispute resolution effective January 31, 2023.

Conclusion

Pursuant to section 49.2 of the *Act*, I grant the landlord an Order of Possession for each unit listed in this application for dispute resolution effective at **1:00 p.m. on January 31, 2023** which should be served on each tenant. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders 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: September 07, 2022

Residential Tenancy Branch