Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 4552 EVERGREEN INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord May 11, 2022 (the "Application"). The Landlord applied for vacant possession of the rental units to perform renovations or repairs.

A.R. appeared at the hearing for the Landlord with S.D., legal counsel for the Landlord. Tenants T.H., K.W., G.E. and B.E. appeared at the hearing, some with other individuals for assistance or support, the names of whom are on the first page of this decision.

Tenant G.E. provided the correct spelling of their name which is reflected in the style of cause.

S.D. asked to remove seven tenants originally named in the Application due to them either moving out or coming to a mutual agreement with the Landlord. The names and unit numbers of these tenants are noted on the front pages of this decision and have been removed from the style of cause.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties, other than S.D., provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. Tenants E.K. and B.E. submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

S.D. confirmed there is no issue with service of the Tenants' evidence.

S.D. advised that the hearing package and Landlord's evidence were sent to all rental units by registered mail May 27 and September 02, 2022. The Landlord submitted customer receipts with tracking numbers on them for the packages sent. None of the Tenants present at the hearing raised an issue with service of the hearing package or Landlord's evidence.

Based on the statements of S.D. as well as the customer receipts, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "*Act*") on May 27 and September 02, 2022. The Tenants are deemed to have received the hearing package and evidence five days after mailing pursuant to section 90(a) of the *Act*. I find the Landlord complied with rules 3.1 and 3.14 of the Rules in relation to the timing of service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to vacant possession of the rental units to perform renovations or repairs?

Background and Evidence

There is no issue that there are valid tenancy agreements between the Tenants and Landlord. I have reviewed the written tenancy agreements submitted and confirmed they are month-to-month tenancies and rent is due by the first day of each month. None of the Tenants present at the hearing raised an issue about being in a fixed term tenancy or rent being due on a day other than the first day of each month.

Landlord's Position

The Application states:

> Vacant possession is required due to invasive work to suites taking place (plumbing located within wall cavities require remediation), asbestos is present in the building and will need to be removed, and remediation of plumbing will require complete shut off of each suite's plumbing (kitchen and bath) and remediation of

all main branch lines will require complete building shut-off. Occupants not permitted while construction in effect.

S.D. made the following submissions regarding the factors relevant on the Application.

(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

The Landlord confirmed with the city that they only require a plumbing permit for the intended work. A copy of the plumbing permit is in evidence. The permit was obtained by the plumbing company hired by the Landlord to complete the intended work. The letter from the architecture company in evidence confirms that only a plumbing permit is required for the intended work. The architecture company confirmed the permit requirements with the city.

As shown in the documentary evidence, the Landlord has gone through the permit process and engaged companies to complete the intended work which shows the Landlord is acting in good faith. The Landlord has submitted photos of an empty unit in the building being renovated which shows a clear intention to renovate and repair the building. The plumbing in the empty unit was brittle. The walls in the empty unit have been completely removed because the plumbing being replaced is inside the kitchen and bathroom walls. The photos show cabinetry and flooring have been removed from the empty unit to complete the renovations and repairs. The Landlord has a statutory obligation to maintain rental units in a state of decoration and repair that complies with section 32(1) of the *Residential Tenancy Act* (the "*Act*") and the intended work will allow the Landlord to comply with this obligation.

(b) the renovations or repairs require the rental unit to be vacant

The rental units are required to be vacant during the intended work. Pursuant to RTB Policy Guideline 2B, required vacancy for any period of time is sufficient to meet this requirement. Further, the vacancy requirement means the rental unit needs to be empty.

Due to the nature and extent of the intended work, the rental units must be vacant. The intended work is invasive as shown in the photos of the empty unit being renovated. The intended work involves complete removal of fixtures and walls because the plumbing being replaced is in the wall cavities.

As well, the renovations pose health risks to people in the building because there is asbestos in the building which must be removed. The Landlord has hired a company to remove the asbestos and there is a letter about this in evidence. The architecture company has also provided a letter about the ceiling needing to be replaced to meet code requirements and the work on this obstructing safety exits in the main areas of the building.

Further, the intended work will result in a prolonged loss of services and facilities that are required to make the rental units habitable. The plumbing work will involve water shut offs and removal of fixtures such that bathrooms will not be usable at all during the work.

(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

The building was built in 1970 and is old. The building needs upgrades. Plumbing is essential for maintaining the rental units. The letter in evidence from the plumbing company confirms the existing plumbing in the building needs upgrades to meet building standards and codes. The letter from the architecture company in evidence confirms the need for plumbing upgrades in the building. The Landlord has also submitted a letter from an insurance company showing upgrades are required to obtain insurance.

(d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

The intended work is expected to take at least four months, which is the best-case scenario. The Landlord has submitted letters showing the intended work will take four months after the drywall and asbestos is removed from the building. There will be no potable water in the building for most of the time during the work. The Landlord was previously granted an Order of Possession for the “sister building” which was built at the same time and operated by the same prior landlord as this building. The Landlord is relying on the prior RTB decision to support their position.

The Landlord submitted the following documentary evidence:

- Letter from an insurance company
- Letter from the architecture company
- Letter from the plumbing company

- Plumbing permit
- Photos of the empty unit being renovated
- RTB decision in relation to the “sister building”
- Letter from the asbestos removal company
- Emails about asbestos

Tenants’ Position

Tenant T.H. and their representatives provided the following testimony and submissions. The photo submitted by the Landlord of the empty unit being renovated does not prove the Landlord’s position about their intention and what they plan to do in the remainder of the building. Nor are the photos proof of what the Landlord is required to do. They dispute that the intended work requires the water in the building to be shut off for four months because the Landlord has offered other tenants in the “sister building” the opportunity to stay in the building and move into renovated units which shows water does not need to be shut off for four months. The Landlord has only provided a blanket statement that it is hard to get insurance, they have not provided documentary evidence showing which insurance companies they have contacted and what those companies said. There are currently seven vacant units in the building which would allow for a lot of movement if the Tenants were offered the opportunity to move into renovated units and the other units were renovated one at a time which is a possibility as stated in the architecture company’s letter.

Tenant K.W. and their representatives provided the following testimony and submissions. In relation to the “sister building”, they have investigated it and WorkSafe BC has not received any notice of asbestos removal at that building. The Arbitrator in the prior RTB decision concluded they did not have enough information regarding asbestos removal which shows the lack of good faith of the Landlord. Insurance can be obtained for the building. There are many holes in the Landlord’s evidence.

Tenant G.E. and their representatives provided the following testimony and submissions. They do not think the Landlord is acting in good faith. They do not dispute that the rental unit requires renovations; however, the whole process has been mishandled. They have not been given an opportunity to move back into the building or been told what rent would be.

Tenant B.E. relied on their documents submitted as evidence and testified as follows. The Landlord is not acting in good faith and has bullied and upset tenants. The Landlord is trying to evict the Tenants so the Landlord can raise the rent. The Landlord

does not need to evict the Tenants because they can do the intended work in stages. The presence of asbestos in the building is merely alleged, this has not been proven as there is no factual evidence of asbestos. The Landlord has the burden of proof in this matter and their evidence is hearsay and unsubstantiated claims. The exits and evacuation routes were mentioned; however, if the building is so bad, why has it not been condemned. The Landlord's evidence refers to the building envelope being in bad shape; however, if this is the case, why is the building not leaking.

The Tenants submitted the following documentary evidence:

- Statement and submissions of Tenant B.E.
- Emails from Tenant B.E.
- The Landlord's evidence with notations on it

Landlord's Reply

S.D. made the following submissions in reply to the Tenants' testimony and submissions. None of the units in this building or the "sister building" are completed, renovations are still underway and nobody is moving into completed units. It is not accurate that tenants are being allowed to stay in the "sister building". Once the renovations are complete, two tenants in the "sister building" are allowed to stay in their units or move to another unit down the hall due to the layout and way that building is structured. Given the age of the building, the plumbing is "tied together" such that when one unit's water is shut off, the adjacent unit's water is also shut off. Further, there are times when plumbing must be accessed from the unit below the unit being worked on. In relation to the comments about WorkSafe BC, they have been contacted and have been on site. Further, the company hired to handle the asbestos is responsible for communicating with WorkSafe BC, not the Landlord.

Analysis

Pursuant to rule 6.6 of the Rules, the Landlord as applicant has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

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.

RTB Policy Guideline 2B addresses ending a tenancy for renovations and repairs and the relevant portions are set out below.

I have considered each of the requirements set out in section 49.2(1) of the *Act* and make the following findings in relation to each.

(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

RTB Policy Guideline 2B outlines information about required permits and states in part:

> 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. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

RTB Policy Guideline 2B also addresses the good faith requirement and states in part:

> 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.
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> 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 (section32(1) of the RTA)…
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> If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.
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> If evidence shows the landlord has ended tenancies in the past for renovations or

> repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

I am satisfied the Landlord has proven they have all necessary permits and approvals to do the intended work. I accept and rely on the Landlord's documentary evidence in this regard. The letter from the architecture company states that they contacted the city which confirmed the Landlord requires a plumbing permit for the intended work. The letter from the plumbing company confirms the city does not require building permits for the intended work but does require a plumbing permit, which has been applied for and received. The Landlord submitted a copy of the plumbing permit showing it has been issued.

I note that the plumbing permit was issued March 30, 2022, and expires if work is not started within six months. It is my understanding from the Landlord's evidence that work has started because the Landlord submitted photos of the empty rental unit being renovated. However, even if the work has not started, I am satisfied the Landlord has met this requirement because the plumbing permit was valid when the Landlord filed the Application and was valid on the hearing date. Further, there is nothing before me to suggest that the Landlord could not obtain an extension of the plumbing permit.

I am satisfied the Landlord has proven they are acting in good faith in filing the Application. The letter from the insurance company tends to support the good faith requirement because it shows the Landlord has a motive and important reason to fully update the plumbing, being the ability to obtain full insurance coverage for the building. The letter from the architecture company supports that the Landlord intends to do the intended work because it shows the Landlord has had the company investigate the building and make recommendations about required renovations and repairs. The letter from the plumbing company supports that the Landlord is acting in good faith because it confirms the Landlord has hired the company to do all necessary plumbing and mechanical upgrades in the building. The photos of the empty unit being renovated do tend to support the Landlord's position and the good faith requirement because they show the Landlord is already starting the type of renovations intended. The letter from the asbestos company confirms the Landlord has hired them to deal with asbestos in the building which again shows the Landlord has taken steps towards completing the intended work which shows good faith.

Given the above, I am satisfied the Landlord has proven this requirement.

(b) the renovations or repairs require the rental unit to be vacant

RTB Policy Guideline 2B addresses the vacancy requirement and states in part:

> 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.
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> 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.
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> 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.
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> Renovations or repairs that require the rental unit to be vacant could include those that will:
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> - 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).
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> 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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time.
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> Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A:

Plumbing		
Re-pipe	Usually minimal	Unlikely
Replacing faucets and fixtures	Usually minimal	Unlikely
Replacing bathtubs/toilets	Usually minimal	Unlikely

Minor asbestos remediation	Usually minimal	Unlikely
Major asbestos remediation	May be significant	May require vacancy
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy

I am satisfied the Landlord has proven the intended work requires the rental units to be vacant. I accept and rely on the Landlord's documentary evidence in this regard.

The letter from the architecture company supports that the intended work requires vacant possession. The letter states that the intended work is extensive and will require plumbing shut offs in the rental units and building. The letter states that the renovation will require extensive and invasive work to rental units. The letter acknowledges "it may be possible" to complete the renovations one unit at a time but states that there would be significant interruptions to rental units. The letter urges caution in having tenants in the building during work occurring within evacuation and exit routes. The letter supports that the intended work could take up to four months. The letter states that a staged process would "greatly slow down" the intended work.

The letter from the plumbing company outlines the scope of the work which includes decommissioning all existing waterlines and installing new waterlines and shut offs. The letter states that there will be no potable water in the rental units for most of the work period which will be approximately four months.

The photos of the empty rental unit being renovated do show the nature and extent of the renovations and support that vacant possession is required.

The letter from the asbestos company confirms there is asbestos in the building and shows they recommend no work being done before the units are cleared of asbestos.

Given the above, I am satisfied the Landlord has proven this requirement.

(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

RTB Policy Guideline 2B states in part:

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

I am satisfied the Landlord has proven the intended work is necessary to prolong or sustain the use of the rental units and building. I accept and rely on the Landlord's documentary evidence in this regard.

I accept based on the letter from the insurance company in evidence that the Landlord is having difficulty obtaining full coverage insurance without fully updating the plumbing in the building.

The letter from the architecture company confirms the building has suffered from wear and tear as well as degradation of some building systems over time. The letter recommends the Landlord complete the intended work. The letter states that the plumbing has decayed, and system failure is occurring given the nature and age of the plumbing. The letter states that not replacing the plumbing could result in major leaks which could cause damage to the Landlord's and Tenants' property.

The letter from the plumbing company states that the existing plumbing in the building needs upgrades because it is “way past its lifespan” and there is likely leaks or damage that is occurring or will occur.

Given the above, I am satisfied the Landlord has proven this requirement.

(d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

RTB Policy Guideline 2B states in part:

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

I am satisfied the Landlord has proven that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement. I accept and rely on the Landlord's documentary evidence in this regard. The letter from the architecture company supports that the intended work could take up to four months. The letter from the plumbing company states that the timeframe for the intended work is approximately four months after the drywall and asbestos is removed. In the circumstances, I accept that the renovations and repairs will take at least four month and find this to be too long to continue the tenancies. I am satisfied the Landlord has proven this requirement.

Given the above, I am satisfied the Landlord has proven the requirements set out in section 49.2(1)(a) to (d) of the *Act*. I find this due to the documentary evidence that the Landlord has submitted which supports the Landlord's position and proves the requirements.

I have considered the testimony and evidence of the Tenants. I find the Tenants have not submitted compelling evidence that calls into question the Landlord's evidence or that the Landlord has proven the requirements outlined above.

In Tenant B.E.'s submissions, they raise issues about the reliability and credibility of the documentary evidence submitted by the Landlord. Tenant B.E. submits that the Landlord's evidence is "flimsy" and biased. I do not agree that the Landlord's evidence is "flimsy" as I find the Landlord has provided documentary evidence from qualified professionals about each requirement outlined above. I acknowledge that some of the Landlord's documentary evidence is authored by companies hired by the Landlord to do work for them and I acknowledge that this could raise reliability and credibility questions. However, the documentary evidence the Landlord has submitted is the type of evidence I would expect to see in these matters because it is the companies hired by the Landlord who have knowledge of the building and intended work. Further, these are independent third-party companies in the sense that they are not connected to the Landlord, other than because the Landlord has engaged their services. I do not accept that the relationship between the Landlord and companies makes their evidence inherently unreliable in the absence of some compelling evidence that their evidence is inaccurate. The Tenants have not submitted any independent evidence that calls into question the reliability or credibility of the Landlord's documentary evidence.

I acknowledge that the Landlord has the onus in this matter and to be clear I have found the Landlord has discharged this onus through their documentary evidence. I simply note that there is nothing before me that causes me to question the reliability or credibility of the Landlord's documentary evidence.

Tenant B.E. raises issues with the plumbing permit in their submissions. I do not find an issue with the plumbing permit.

Some of the submissions of the Tenants focused on the Landlord not providing proof of their position. I disagree with the Tenants' submissions in this regard. The Landlord has provided proof of their position through letters from qualified professionals who are aware of the building and intended work which is the very type of proof required in these matters. I find it is actually the Tenants who have made statements and allegations that are not support by any compelling evidence.

I have reviewed Tenant B.E.'s notations on the Landlord's evidence package and do not find that they call into question the reliability or credibility of the documents.

Given the above, I am satisfied the Landlord has provided sufficient evidence to prove the requirements set out in section 49.2(1)(a) to (d) of the *Act*. Pursuant to section 49.2(3) of the *Act*, I must grant the Landlord an Order of Possession for the rental units. Pursuant to section 49.2(4) of the *Act*, the Order of Possession is effective February 28, 2023.

Conclusion

The Landlord is issued an Order of Possession effective February 28, 2023. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 20, 2022

Residential Tenancy Branch