



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

The Landlords seeks an order of possession for renovation or repairs pursuant to s. 49.2 of the *Residential Tenancy Act* (the “Act”).

I.T. and B.G. appeared as the Landlords. J.B. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Landlords entitled to an order of possession for renovation or repairs?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit in late August 2020.
- Rent of \$1,300.00 is due on the first day of each month.
- The Tenants paid a security deposit of \$650.00 to the Landlords.

The parties further confirm that the tenancy is on a month-to-month basis.

The parties both advised that there was a water leak into the rental unit from another portion of the building. The Landlords advise that occurred on December 28, 2021. The water leak has been addressed. However, I am advised by the Landlords that there was damage to the rental unit, which requires remediation.

The Landlords testified that the flooring needs to be replaced, a kitchen cabinet as well, and some drywall holes need to be patched and painted. I am told by the Landlords that the flooring that is to be replaced runs throughout most of the rental unit.

The Landlords testified that the work would take approximately 2 to 3 weeks to complete. The Landlords' evidence includes a copy of an email dated May 10, 2022 from the manager for the remediation company confirming the 2 to 3 week timeline and indicate that it would take 3 to 5 days to replace the flooring alone. The Landlords say that the work does not require a permit.

The Landlords testified that the rental unit needs to be vacant as per the recommendations of the remediation company. The Landlords described the issue as one of liability in which the remediation company will not move the Tenants belongings and cannot undertake the work with the Tenants belongings in the rental unit.

The Landlords' evidence includes an email from the project manager dated May 2, 2022, which states:

For now, we will be on hold as we cannot proceed with the repairs (including flooring replacement, baseboard repairs and cabinet repairs) with the contents inside the unit.

The Landlords' evidence also includes an email from the flooring contractor dated May 17, 2022, stating the following:

From our end, it is best for tenants to remove all contents before we begin the flooring replacement. There is still existing flooring and underpad which needs to be removed as well as baseboards that need to come off the walls. As your insurance does not cover content manipulation, our installers will not touch one item of the tenants contents. In order for us to remove existing floors and baseboards, furniture will have to be moved out of the area.

The Tenant acknowledges the damage and the need for repairs, though indicates that the repairs are not so significant as to warrant an order of possession. The Tenant testified that a section of flooring approximately one square meter in size is missing but that the rental unit is otherwise in good shape. The Tenant expressed a concern for costs associated with moving out of the rental unit, though indicated that she was willing to accommodate the Landlords in having the repairs undertaken by temporarily vacating the rental unit. The option of keeping the Tenants belongings in the rental unit was explored by the parties in the spring of 2022 but ultimately proved to be an issue with respect to getting the repairs completed.

I am told that the Tenants filed an application before the Residential Tenancy Branch seeking monetary compensation related to present repair issues. I was provided with a file number and obtained a copy of the decision, which shows the Tenants' claims were dismissed without leave to reapply.

There was also some discussion with respect to the Tenants' renter's insurance. I am told by the parties that the Tenants had initiated a claim with their insurer but later withdrew it. The Landlords argued that the Tenants are not cooperating in having the repairs undertaken. The Tenant argues that they have been provided with scant information from the Landlords with respect to the repair process.

Analysis

The Landlords seek an order of possession for renovation or repairs.

Pursuant to s. 49.2(1) of the *Act*, a landlord may request an order of possession ending the tenancy if all 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; and
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

If an order of possession is granted, s. 49.2(4) requires that the effective date of the order be no earlier than 4 months after the date the order is made, be the day before rent is payable under the tenancy agreement, and in the case of a fixed term tenancy, not earlier than the end of the term set in the tenancy agreement.

I have little difficulty in finding that the Landlords have demonstrated a good faith intention to undertake the repairs. Their evidence clearly demonstrates that they have engaged qualified professionals to take complete the work but that matters have been at a standstill beginning in May 2022 due to the present impasse respecting the Tenants continued occupation of the rental unit.

I struggle, however, to accept that the other aspects set out under s. 49.2 of the *Act* have been established by the Landlords.

Policy Guideline #2B provides guidance with respect to the application of s. 49.2 of the *Act*. It states the following with respect to the vacancy requirement:

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).

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.

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.

Appendix A of Policy Guideline #2B lists cabinet replacement and flooring replacement as usually causing minimal disruption and being unlikely to require vacancy of the rental unit.

Policy Guideline #2B provides further guidance with respect to whether ending the tenancy is the only reasonable way to achieve the necessary vacancy, stating the following:

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.

The renovations detailed by the Landlords are related to the replacement of flooring, cabinetry, and drywall repair. Though I accept that the flooring runs throughout most of the rental unit, based on the information before me that disruption is to last for a mere 3 to 5 days. I have little doubt that vacancy of the rental unit would make the flooring replacement more convenient and efficient for the installers. However, the other work is not of a nature that would, in my view, require vacant possession of the rental unit.

Further, the length of the repairs, whether the 3 to 5 days to replace the flooring or the 2 to 3 weeks to complete the work generally, is not of sufficient length to warrant ending the tenancy. This is particularly so because the Tenants have expressed a willingness to vacate the rental unit for the repairs to be completed. Ending the tenancy would be disproportionate to the repairs required.

I find that the Landlords have failed to establish the elements set out under s. 49.2 of the *Act* that ending the tenancy is necessary to undertake the repairs. I dismiss the Landlords' application without leave to reapply.

Based on the submissions provided to me by the parties, it appears likely that they have become exceedingly positional with respect to finding a solution to the problem. I encourage the parties to work cooperatively and constructively to complete the repairs, which will invariably involve a level of compromise from both sides.

Conclusion

The Landlords' application is dismissed without leave to reapply.

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: October 11, 2022

Residential Tenancy Branch