



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0875065 BC 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 June 09, 2022 (the “Application”). The Landlord applied for vacant possession of the rental unit to perform renovations or repairs.

V.V. appeared at the hearing for the Landlord. The Tenants appeared at the hearing with a support worker. 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 provided affirmed testimony.

Tenant E.J. provided their full legal name which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence prior to the hearing. I confirmed service of the hearing package and Landlord’s evidence, and no issues arose.

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 unit to perform renovations or repairs?

**Background and Evidence**

The parties agreed on the following. The Tenants moved into the rental unit in 2016, prior to the Landlord owning the rental unit. The tenancy is a month-to-month tenancy. Rent is \$675.00 per month due on the first day of each month. Tenant S.M. does not live in the rental unit but is a co-signer of the tenancy agreement. The Landlord purchased the rental unit in February or March 2022.

V.V. for the Landlord testified as follows.

Several units in the building the rental unit is in have had mold issues due to the back wall being cinder block with no insulation. When hot air from the unit hits the cold wall, it creates condensation which results in mold growth on the back wall. The mold damages the units. The building has 29 units, and the Landlord owns five of them. In three of the five units, the Landlord has installed a frame wall in front of the cinder block wall and put in insulation so there is a new wall in front of the original wall. The new wall stops hot air from the unit hitting the cold cinder block wall which stops the moisture and mold growth. The Landlord has been doing these renovations and repairs when tenants move out and now wants to do these renovations and repairs in the rental unit.

In the rental unit, the back wall is in the bedroom and bedroom closet. The new wall must be installed, drywalled and painted. The renovations and repairs require the use of chemicals to kill the mold. The Landlord also wants to take out the carpet in the bedroom and living room and install new flooring. The kitchen cabinets would also get a "face lift". The Landlord offered the Tenants two other units in the building, for higher rent, but the Tenants did not accept this offer. In relation to the fifth rental unit owned by the Landlord in the building, the Landlord wanted to obtain an Order of Possession on this Application first and then apply again in relation to the remaining rental unit.

In relation to replacing the carpet, the carpet in the bedroom needs to be replaced because moisture from the wall leaks down and ruins it. The Landlord has been replacing carpet with vinyl plank in other units. The carpet in the remainder of the rental unit is worn out.

In relation to the kitchen cabinets, this is a cosmetic issue as the cabinet doors are old.

The rental unit is a one-bedroom unit. For the other units already renovated and repaired, the work took around three weeks depending on the sub-trades. The three weeks was for the mold remediation and installation of the new wall. It was “not a lot of work”. The Landlord requires vacant possession of the rental unit because of the mold and mold remediation which is a health issue. Further, the Landlord is installing a whole new wall. The Tenants could move their belongings into the living room while the work in the bedroom is done; however, the carpet also needs to be re-done in the living room. Further, the Landlord needs to use a spray on the mold which requires the rental unit to be vacant when used. V.V. does not know the timeframe needed for the spray on the mold, it depends on what they use. There will also be drywall and drywall dust. It will be three weeks of the bedroom being covered off from use.

The Tenants agreed the renovations and repairs need to be done. The Tenants disputed that they need to move out of the rental unit for the renovations and repairs to be done. The Tenants agreed they could move their belongings out of the bedroom for three weeks into the living room to allow the work to be done. The Tenants disputed that the carpet or kitchen cabinets need to be removed for anything other than cosmetic reasons. The Tenants said they are fine with the Landlord coming into the rental unit to do the renovations and repairs and will take no issue with the Landlord and workers entering the rental unit.

The Landlord submitted the following evidence:

- City bylaws
- Photos of the mold on a back wall
- Photo of the carpet in the living room of the rental unit
- Photo of the back bedroom wall

### **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...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...

(emphasis added)

RTB Policy Guideline 2B addresses ending a tenancy for renovations and repairs. In relation to the vacancy requirement, RTB 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**).

**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.

(emphasis added)

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

Type of Renovation or Repair	Disruption to tenants	Requires Vacancy?
<b>Interior</b>		
Replacing cabinets/vanities/countertops	Usually minimal	Unlikely
Replacing backsplashes	Usually minimal	Unlikely
Interior painting	Usually minimal	Unlikely
Replacing interior doors	Usually minimal	Unlikely
Replacing flooring/baseboards	Usually minimal	Unlikely
Replacing appliances	Usually minimal	Unlikely
Adding appliances	Usually minimal	Unlikely
Demolishing a non-load bearing wall	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

In relation to the requirement that “the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement”, RTB 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.

The Landlord has failed to prove that the proposed renovations and repairs require the rental unit to be vacant or that the only reasonable way to achieve the necessary vacancy is to end the tenancy.

The intended renovations and repairs are not extensive.

The need to use chemicals to kill the mold does not present enough of an issue to require vacant possession. I do not accept that the mold remediation will create an unsafe environment for the Tenants because there is no compelling evidence of this before me. Further, even if it does create an unsafe environment, I am not satisfied this would be for any substantial length of time and I am confident the Landlord and Tenants can arrange for mold remediation to occur without ending this tenancy. There is no compelling evidence before me showing that the mold remediation will take a substantial length of time. The mold is in one defined area of the rental unit, the bedroom. The Landlord can seal off the bedroom if chemical use is an issue. Further, if the chemicals used actually require occupants to vacate the rental unit for a period of time, which there is no compelling evidence of this being the case before me, the Landlord can arrange to have the Tenants stay elsewhere for that period.

The renovations and repairs of the carpet and cabinets are largely cosmetic in nature. Replacing flooring does not require vacant possession. It may be more convenient to

have the rental unit empty to replace flooring, but it is not necessary. Replacing kitchen cabinets does not require vacant possession and it is hardly arguable that the Tenants being present in the rental unit would have any real impact on the work of replacing cabinets.

Even accepting that the renovations and repairs will take three weeks, which there is no compelling evidence of before me, this is not a long period of time, and the Landlord and Tenants can arrange for the renovations and repairs to be done while the Tenants remain in the rental unit or leave for a brief period.

Neither the nature nor the extent of the proposed renovations and repairs leads to a reasonable conclusion that this tenancy must end.

In the circumstances, I am not satisfied the Landlord has proven the requirements set out in section 49.2(1)(b) and (d) of the *Act* and therefore the Landlord is not entitled to an Order of Possession for the rental unit. The tenancy will continue until otherwise ended in accordance with the *Act*.

### **Conclusion**

The Landlord is not entitled to an Order of Possession for the rental unit. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: November 04, 2022

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Residential Tenancy Branch