



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HECTOR T. HOLDINGS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

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

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

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

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

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing

and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession in order to perform renovations or repairs?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a monthly rent of \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$625.00, and \$625.00 pet damage deposit ("Deposits"), and the Agent confirmed that the Landlord still retains the Deposits in full.

As the onus is on the Landlord to prove on a balance of probabilities that the resulting evictions are warranted, I asked the Agent a number of questions in order to gather information to make this determination. These questions and answers are set out below.

1. What is the scope of the work?

The scope is to make the house more efficient as a rental to use for foreign labour on the farm. The rent is low for the property, because the utility costs are high. The building is an early 1900 era house; the walls are made of rice paper.

You aren't allowed to charge utilities to foreign workers, so we have to make the house efficient for us to pay for it. The work is a lot of wear and tear. A contractor looked into it, and told us that with water freezing, insulation is needed around the windows and in the house. Any HVAC issues – it's more energy-efficient, and now that we will be paying for utilities, it makes sense to invest.

There are very old floors that need to be resurfaced. It was previously carpet, but it was just beat up. The railing is under three feet tall, so I'll raise that and make it safer.

The scope is outlined on the document submitted and that hasn't changed. We don't have to divide it among units – it's just one house for the same purpose.

The Tenant responded, saying:

This is definitely an old house and we talked to [the Landlord] the first November we were here. The bathroom does need some work. I talked to him about two years ago – there's a leak behind the shower wall. He was going to get it done last spring. It's still currently carpeted in here, but the flooring needs work. Everything could be touched up for sure, but we've been living in it comfortably for three years.

The Agent submitted a letter from a contractor, [D.K.] Construction ("Contractor") detailing the scope of the work, as follows:

Attention: British Columbia Residential Tenancies Branch

File Number [file number]

To whom this may concern,

[residential property address] project

I am writing this letter to inform you that [D.K.] Construction will be completing an interior renovation at the above address. [D.K.] Construction has been requested from the homeowners of the property to perform the following renovation:

- Bathroom renovation
- Kitchen renovation
- Floor refinishing upstairs & downstairs
- Raise railing height of central staircase
- Add full built in closets to all bedrooms
- Trim and paint though out interior of house

[D.K.] Construction **will not need to pull a building permit for this project** as we will not be changing anything structurally on the house. All work that will be completed on this project will not affect the structural strength or building.

Removal of all furniture is required to refinish and replace all the flooring in the house in an efficient manner. The kitchen and bathrooms will not be useable during the renovation as water will be turned off as tubs and sinks are removed and replaced. Temporary removal of the railing is hazardous to occupants. Because of these main factors, among others associated with job site liability, we will require the home to be vacant.

Call me if there are any other questions.

Regards,

[emphasis added]

2. What permits will you need? Do you have them all? If no permits are required, what supporting documents do you have to show this?

The Contractor set out that permits are not needed; however, when I asked the Agent if he had contacted the municipalities to enquire about permits, he said:

I have nothing that's in writing, but in conversations I've had with friends who work in the City and Regional District, there's nothing needed. We're not knocking down walls or there's nothing with asbestos - everything is more or less repairs.

The Tenant said: "Honestly, I just found out about that. I wouldn't know about what permits are required or if they would be, so for me no comment."

3. Why now while the unit is tenanted, as opposed to prior to this tenancy or after this tenancy ends?

The Agent said;

Because the staff on our farm is aging and their health has changed in the last years. My father has colon cancer, he's better, but he's still 66 and naturally trying to back off his responsibilities.

Our second in command has stomach and other cancer and is now on compensation for medical reasons., We're short of staff and labour is getting harder to find. We tried to locate labour locally, but with no success.

We have one person currently living in the house on the farm, but we intended to use the house for a care person for my grandfather. We planned to bring a worker in September when we gave the written notice in June. Had to cancel that person, because of the RTB hearing. We found another person and convinced my parents to use the house for .. The last year has been extremely difficult with the workload and health of senior staff, demands of the weather, and of the business. We need to invest more in foreign labour and we need housing for

them that's affordable for us to pay for.

The Tenant said:

He had expressed in one of his messages that his family is going through some health issues. I've been looking for the market for rentals, and it's brutal. When we started renting, [the Agent] and I were good friends. But things change with Covid... there are reasons for foreign labour, and our friendship has also come to an end; maybe that was not comfortable with us staying here.

The Agent said:

[The Tenant] said we've been friends since grade 8 in 1996, so when her and her husband - when they were needing a home, I had no hesitation, because I cared for their well-being. What happened in Covid times – it was devastating for a lot of relationships. When I served the Notice, it was for business reasons. I gave them advance notice in June, so their child didn't have to transition to a new school mid year. We gave them a heavily discounted rental rate, but they also knew the house was inefficient and ... I still want the best for them. It's always hard with friends in business.

4. Do you have a contractor lined up? How much will these renovations cost (ballpark)

I did, but they're in a holding pattern. As for cost, it is a very wide range, because just the bathroom can vary from tens of thousands of dollars depending on what you find in the walls. For insulation, water proofing, and plumbing, you're looking at cost plus, but we'll see what happens when the wall is opened up. It could be an extra \$5,000.00 when you find what's behind there.

We'll do plumbing and insulation and after that see where our budgets are at and work around things.

5. How will the renovations be done? Can they be done a room at a time?

Starting with the bathroom. It was the biggest questions in terms of what it will cost – fixing the floors, the bathroom is studded with 2 x 4s, we'll replace the tub, the fan, the ceiling - it's a complete job. It's a southern exposure of the house. We'll do workarounds when we want to expose those – when it's freezing.

The Tenant said:

The main bathroom is an extension of the original house. It's attached to the laundry room. I don't know if the plumbing is tied in to the laundry. My brother is a plumber said it can be done one room at a time. When [the Agent] says it's a full gutting job, that's up to him. I mentioned this leak two years ago, and if it was pressing it would have been fixed if anyone was living here, not just the next people in line. He did have a contractor – in July. He had a lot of room to get that space done.

6. Can the Tenants stay in the unit while renovations are being done? If not, why not?

Both bathrooms are tied to the same plumbing systems, and we have to pretty well replace the plumbing so we're, constantly opening up the southern wall of the house to re-route drain lines. We're replacing flooring in bathroom and in the kitchen, taking off window trim, resealing – it's a significant amount of work - more than just a coat of paint.

The Tenant said:

It depends on how he's going about it. If we're talking about the whole house with windows. But this bathroom on it's own, you could put a door up; it's an extension - it was built years later. If it's the preference of getting it done is to take out the windows - if we're doing it in the rainy season – he's not going to open up a lived in home in this weather. All the windows are needing to be replaced and insulated. Yes, there would be wind, but it would be about half an hour per window.

7. How long will the renovations take? (Estimate)

About a month. I had the contractor evaluate the house in June, because I was lining up for August - it's hard to get contractors. I had to renovate my own home in Covid. We had to schedule a two-month renovation that took six months. I have to schedule far in advance. He was looking at the whole house in general, because we were looking at bringing in foreign labour.

The Tenant did not have any comments on this matter.

8. Are there any ulterior motives for ending this tenancy?

No, honestly - 100 times no. It's extremely awkward, because of the schism that Covid times had on the friendship. The needs of the farm are above the friendship we have or had with the Tenants. We have to do what we have to do for the survival of the business. The time I have to put in to cover the lack of staff. It's a trend that's happening across the industry. We can't find local workers. If I were renting to someone else, I could pass the cost on to the renter, but when we can only legally charge a person \$120.00 for the rental, we have to make it efficient or we're losing money.

The Tenant said:

I totally understand that this is business for him and he needs to do it for his business, but I have looked at so many rentals and have applied for so many – the costs in some places are triple what we pay here. It's not his fault, but it's unsustainable for us to move. I've gotten two call backs and that's all. We both work and have one daughter. I'm not trying to dig my heels in; I want my daughter to finish her school she's been in. People are struggling across the board.

Analysis

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

Section 49.2 of the Act addresses ending a tenancy for renovations or repairs. Landlords must meet a four-part test in order to be granted an order of possession of the rental unit. The Landlord must prove all points in the following test:

1. Has a good faith intent and has obtained all necessary permits and approvals required by law to carry out the renovations or repairs;
2. The renovations require the rental unit to be vacant;
3. The renovations or repairs are necessary to prolong or sustain the use of the rental unit or building in which the rental unit is located; and
4. The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

("Test")

1. GOOD FAITH INTENT – ALL NECESSARY PERMITS... OBTAINED

The Agent said he has nothing in writing saying that he does not need permits for the work to be completed. He said “we’re not knocking down walls or nothing with asbestos, everything is more or less repairs.” However, he also said the costs of the renovations will go up depending on what they find behind the walls. Further, the Agent did provide a letter from the Contractor saying that permits are not needed for the planned renovations.

Good Faith is clarified in RTB Policy Guideline #2B, “Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use” (“PG #2B”), as follows:

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 1371.

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.

[emphasis added]

The Tenant agreed that the house needs a lot of work, and the Tenant did not raise good faith as an issue in this matter.

When I consider the evidence before me in this matter, I find that the Landlord has a good faith intention to renovate the property, so that it is a more efficient structure with reduced utilities costs. I find that the Landlord has a clear business purpose to engage in these renovations, and in order to make the Landlord's farm economical. Further, I find that the Agent provided sufficient evidence that permits are not needed for this work. I find that the Agent has met the requirements of the first step of the Test.

2. REQUIRE IT TO BE VACANT

PG #2B states the following about the requirement for vacant possession:

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.

The likelihood of the Agent's proposed upgrades requiring vacant possession from Appendix A include:

Type of Renovation/Repair	Disruption to Tenants	Requires Vacancy?
Re-pipe	Usually minimal	Unlikely
Replacing faucets & fixtures	Usually minimal	Unlikely
Exterior window replacement	Usually minimal	Unlikely
Building envelope repair/ remediation	Usually minimal	Unlikely
Replacing flooring/baseboard	Usually minimal	Unlikely
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy

Given the type and extent of the bathroom and kitchen renovations, I find it more likely than not that the Agent requires vacant possession, because the residential property will be filled with cold air while the walls and windows are removed during the process – while they remove water lines and windows throughout the house. However, as the

Parties agreed in the hearing, the bathroom is an addition to the laundry room, and can be blocked off when the work needs to be done. The Agent said the bathroom work involves:

...fixing the floors, the bathroom is studded with 2 x 4s, we'll replace the tub, the fan, the ceiling - it's a complete job. It's a southern exposure of the house. We'll do workarounds when we want to expose those – when it's freezing.

There are two bathrooms in the rental unit, and therefore, the Tenants will not be without this feature, if the bathrooms are renovated one at a time.

Based on the evidence before me overall in this matter, I find that the Agent has not provided sufficient evidence that the renovation requires vacant possession. Accordingly, I find that the Agent has not met his burden to fulfill all parts of the Test, and therefore, I dismiss this Application without leave to reapply.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Landlord is unsuccessful with his Application, because the Agent failed to provide sufficient evidence that he needs vacant possession to complete the planned renovations. Accordingly, I dismiss the Landlord's Application 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: December 07, 2022

Residential Tenancy Branch