Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMEFIELD PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on September 8, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Possession of the rental unit to perform renovations or repairs.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on November 3, 2022, and was attended by the agent for the Landlord T.F. (the Agent), the Tenant and the Tenant's advocate C.R. (the Advocate). All testimony provided was affirmed. As the Tenant acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them in the manner requested at the hearing.

Preliminary Maters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 49.2 of the Act?

Background and Evidence

The parties disagreed about whether the Landlord is entitled to end the tenancy pursuant to section 49.2 of the Act, with the Agent arguing that they are and the Tenant and Advocate arguing that they are not. The Agent stated that the building was in poor condition when it was purchased, and that one unit had sat vacant for over 2 years as a result. The Agent stated that a carport had collapsed in the past and that search and rescue had to be brought in as a result. They also stated that they had to buy their original partners out of the property as they did not wish to take on the necessary work and that they have renovated 8 units so far since the building was purchased. The Agent stated that everything in the building is well past its expected lifespan and that every suite needs to be renovated. The Agent stated that their insurance rates are increasing significantly due to the age of the building and that their insurance company is requiring them to complete renovations to remain insured. The Agent stated that if they cannot get and maintain insurance then they cannot get financing and therefore they cannot continue to operate the building for rental. The Agent stated that although they plan to replace things such as flooring, light fixtures, countertops and backsplashes, the renovations are not just cosmetic in nature as they will be ripping out things such as tubs and toilets and framing-in the existing sprinklers. The Agent argued

that it will be impossible to complete the renovations while the rental unit is occupied as they would not be able to get contractors in at their own convenience. The agent predicted that it would take five or more months to complete the renovations as this is how long it took them to renovate the unit across the hall.

The Agent submitted an e-mail chain with the municipality in support of their position that no permits or approvals are required for them to complete the renovations as well as photographs of other renovation projects in the building in support of their position that this renovation is a massive undertaking.

Although the Tenant and Advocate did not disagree that the landlord intends in good faith to complete the renovations, they argued that as the renovations are cosmetic in nature the tenancy does not need to end for them to be completed. The Tenant and Advocate pointed to the e-mail from the municipality in support of their position that the renovations are cosmetic in nature, as well as Residential Tenancy Policy Guideline (Policy Guideline) #2B.

Although the Tenant and Advocate stated that the rental unit does need painting and normal maintenance that has been neglected by the Landlord, many of the renovations the Landlord now seeks to complete have already been completed by the Tenant throughout the course of the tenancy such as replacement of carpet throughout much of the rental unit, replacement of linoleum in the kitchen and bathroom, installation of new backsplashes, a new chandelier, new tiling, and new taps in the kitchen. The Tenant submitted photographs of the rental unit in support of this testimony.

The Advocate argued that the Tenant has already lived through the inconvenience of previous renovations, that the renovations are not needed for the unit it to continue to be used as a rental unit as the Tenant is happily residing there without issue, and that the Landlord has provided no evidence that the tenancy needs to end as a matter of course for any renovations to be completed. The Advocate also called into question whether the Landlord should have sought to end all ongoing tenancies in the building as part of this application under 49.2(2) of the Act, as the Agent stated at the hearing that all but the 8 previously renovated rental unit in the building need major renovation.

Although the Landlord called the Tenant’s testimony that they had replaced many things in the rental unit over the course of the tenancy into question, their rational for doing so was that they simply find it unlikely.

Analysis

Section 49.2 of the Act states that a landlord may apply for an order to end the tenancy if all of the following apply:

a) the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit(s);
b) the renovations or repairs require the unit(s) to be vacant;
c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit(s) or the building in which the rental unit(s) are located; and
d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

During the hearing the Agent pointed to an email from the municipality in which the rental unit is located, in support of their position that no permits are required. While I acknowledge that the email indicates that no permits are required for the type of renovations to be completed by the Landlord in this case, the reason given is that “no building permit is required for maintenance and cosmetic work”. As a result, I am satisfied that no permits are required by the municipality because the Landlord seeks to complete only maintenance and cosmetic work, and not structural and plumbing changes, which would in fact require permits as set out in the email from the municipality.

Although numerous photographs were submitted by the Agent to demonstrate the nature and extent of the types of renovations they wish to complete in the rental unit in support of their position that the rental unit must be vacated in order for the renovations to be completed, none of the photographs were of the rental unit itself and the Tenant and Advocate argued that many of the renovations have in fact already been completed in the rental unit over the course of the tenancy. Photographs of the rental unit were submitted by the Tenant in support of this argument. Although the Agent also argued that the insurance company requires the renovations to be completed for the building to remain insurable, no documentary or other corroboratory evidence was submitted in support of this, and the Tenant and Advocate questioned the veracity of this testimony. As a result, I find that the Landlord has failed to satisfy me on a balance of probabilities that 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, as I am satisfied that they are entirely or substantially cosmetic in nature, are restricted to only the rental unit, and not common areas or facilities, and no corroboratory evidence was submitted to verify the

Landlord's testimony that the renovations are required by their insurance provider in order for the building to remain insured.

The Tenant and Advocate also pointed to Policy Guideline #2B, specifically the chart shown on pages 9 and 10, and argued that the types of renovations the Agent states will be completed, such as replacing plumbing faucets and fixtures (like toilets, showers, sinks, and tubs), replacing lights, receptacles and switches, replacing cabinetry, countertops, backsplashes and vanities, replacing flooring and appliances, painting, and the demolition of non-load bearing walls, are listed as likely to cause only minimal disturbance to tenants and unlikely to require vacancy. While the Agent stated at the hearing that it would be impossible to complete the renovations while the rental unit is occupied as they would not be able to get contractors in efficiently and at their own convenience to do the work while it is occupied, I find that the Agent has confused impossibility with impracticality, which is not the same thing. Policy Guideline #2B clearly states 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. It also states that 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 such as replacing light fixtures, switches, and receptacles, replacing baseboard heaters, painting walls, replacing doors or baseboards, replacing carpets and flooring, replacing taps, faucets, sinks, toilets, or bathtubs, and replacing backsplashes, cabinets, or vanities.

As a result of the above, I am not satisfied by the Landlord or the Agent that either the renovations require the rental unit to be vacant, or that the only reasonable way to achieve the necessary vacancy is to end the tenancy. Further to this, I have concern that the Landlord may have failed to comply with section 49.2(2) of the Act.

Based on the above, I therefore dismiss the Landlord's Application seeking an order of possession for the rental unit pursuant to section 49.2 of the Act, without leave to reapply.

Conclusion

The Landlord's Application seeking an order of possession for the rental unit pursuant to section 49.2 of the Act is dismissed without leave to reapply.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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

Dated: December 7, 2022

Residential Tenancy Branch