



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding BAYVIEW APARTMENTS LTD.  
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. The participatory hearing was held, by teleconference, on March 16, 2023. The Landlord applied for an order of possession for 2 rental units in order to perform renovations or repairs that require the rental unit to be vacant, under section 49.2(1) of the *Residential Tenancy Act* ("the Act").

All parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding package. I find this package was sufficiently served. However, with respect to the Landlord's evidence, which was included in the Landlord's Notice of Dispute Resolution Proceeding package, I note that both Tenants assert that the Landlord only provided them with 5 photos, in black and white, in poor resolution, which is different than the colored digital photos provided to RTB. Further, the Tenants take issue with the fact that the Landlord provided 7 photos to RTB, but only 5 to them, which were hard to see.

I turn to Rule of Procedure 3.7, which states the following:

*3.7 Evidence must be organized, clear and legible*

*All documents to be relied on as evidence must be clear and legible.*

*To ensure a fair, efficient, and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent*

*and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.*

*For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".*

*To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.*

In this case, I find the manner in which the Landlord submitted his photos to the Tenants is prejudicial, as they are low quality, black and white reproductions, and the Landlord only provided the Tenants with 5 of the 7 photos provided to RTB. Whereas the photos provided by the Landlord to the RTB were higher quality color photos, and there were 7 of them, not 5. I find this does not comply with Rule 3.7, and I find the photos are not admissible. The Landlord provided a copy of the building permit, which the Tenants acknowledge getting, and I find that document is admissible.

The Landlord confirmed receipt of the Tenant's evidence, and no service issues for these documents were raised.

The Landlord stated that he initially applied against 3 rental units. However, unit #203 moved out, and he wishes to withdraw his application for that unit. I hereby amend the application accordingly.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue to be Decided

- Does the tenancy need to end in order for the Landlord to perform renovations or repairs that require the rental unit to be vacant?

#### Background and Evidence

The Landlord stated that he bought this building about 1.5 years ago, and it is a 1960's building with many original building components. The Landlord stated that in the past several month, as other units become vacant, he has started to renovate the units and upgrade aging infrastructure. The Landlord stated that he plans on doing the following to each of the remaining two units:

#### Bathroom

- removing the flooring, cabinets, bathtub, toilet, move electrical outlet

#### Electrical

- upgrade panels in each unit (power to be shut off for at least 24-48 hours)
- adding electrical outlet to install dishwasher in kitchen
- remove some drywall around panel during upgrade

#### Flooring

- replace flooring in entire unit

#### Kitchen

- replace kitchen cabinets

The Landlord estimated it would take 2-3 months to perform the renovations due to limited tradesman availability and due to material shortages. The Landlord stated he is not planning on removing drywall down to the studs.

The Tenants stated that they do not feel the renovations are such that they cannot be done while they are living there. The Tenants stated that the electrical panels work fine, and only minor repairs are required. The Tenants do not feel they should have to suffer and move out for a few superficial repairs.

#### Analysis

Section 49.2(1) of the Act provides that 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.*

The Act provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

*When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.*

...

*If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.*

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

*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.*

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

*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.*

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

*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.*

*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.*

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

The onus is on the Landlord to provide evidence that the planned work reasonably requires the tenancy to end. I accept that the Landlord has obtained a building permit for some of the work noted above. However, I find there is a lack of corroborating evidence showing that the nature and extent of the renovations are such that they cannot be done while the Tenants remain living in the unit. It appears that any work on critical services or facilities such as electrical panel replacement, would be relatively short lived, and would be reasonably contained. Also, it is unclear why the other items the Landlord is wishing to renovate, could not be done in phases, while allowing the Tenants to remain in the unit. I am also not satisfied, even if the Tenants needed to vacate the unit for some of the renovations, that the time frame would be long, such that they could not move out for a brief period while the essential tasks were completed.

I find the Landlord has not met the onus to demonstrate the tenancy must end, pursuant to section 49.2(1) of the Act, for the above noted reasons. I dismiss the Landlord's application, in full.

Conclusion

The Landlord's application is dismissed, in full.

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: March 17, 2023

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Residential Tenancy Branch