Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession to perform renovations or repairs to the rental unit pursuant to section 49.2 of the Act.

The tenants attended the hearing. The landlord SS attended the hearing on behalf of both landlords. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

SS testified, and the tenants confirmed, that the landlords served the tenants with the notice of dispute resolution package and supporting documentary evidence. The tenants testified, and SS confirmed, that the tenants served the landlords with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the landlords entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Tenant CW and the landlords entered into a tenancy agreement to rent the rental unit in April 2017. On September 1, 2021, tenant CR was added to the agreement. Monthly rent is currently $2,219.81 plus a newly imposed rent increase of $44.00 which I understand is being disputed by the tenants. CW paid a security deposit of $1,025 and a pet damage deposit of $800 at the start of the tenancy, which the landlords continue to hold in trust for the tenants.

The rental unit a three-bedroom, two-bathroom suite located on the upper level of a single detached house. On the lower level contains another suite (the "**Basement Suite**"), which is not the subject of this application.

SS testified that the landlords bought the residential property in 2004. One year ago, they fully renovated the basement suite. He testified that they initially planned for that renovation to take one month but that it took two months instead. He testified that he now wants to do the same type of renovation in the rental unit. He stated that since he purchased the residential property, no renovations have been done in the rental unit other than paint touch-ups.

In a written statement he submitted in advance of the hearing, SS wrote:

> All lighting, plumbing and electrical fixtures will be removed during the:
> - refinishing of the walls and ceilings
> - removal and replacement of all flooring
> - removal and replacement of all countertops
> - the replacement of all electrical and plumbing fixtures.
>
> This will make the [rental unit] uninhabitable with no running water, toilets, sinks, baths, showers, heat or lighting.
> While refinishing all millwork, the paint used to refinish laminated millwork is very toxic and no resident can be present.
> While replacing all flooring, flooring repairs and leveling materials will make the [rental unit] unsafe to inhabit.

SS testified that he wanted to be “as efficient as possible” in undertaking the renovations at intended to have all of this work done contemporaneously so as to be cost efficient.

He testified that he wanted to undertake these renovations in order to “update” the rental unit. He testified that the rental unit was “out-dated”. He testified that, due to a manufacturers defect, the seals around the window frames had warped and were allowing air and moisture into the rental unit. Other than this, SS did not state that there was anything wrong with any of the elements of the rental unit. He reiterated that he wanted to update the rental unit and to “invest in the property” because it is “quite dated”.

SS testified that these renovations could not be undertaken in stages as the only way to be efficient and cost effective was to do them all at once. He also testified that it would not “be feasible” to have the tenants continually relocate out of the rental unit, as they have a young child and it would “take too long” and cost “far too much money”.

SS stated that after making the application he received updated schedules from the tradespeople he had contacted to undertake these renovations. He now estimates the time they would take to be between 8 and 12 weeks.

SS testified that he did not need any permits to undertake these renovations. In support of this, he submitted a copy of the local municipal building bylaws. In his written statement he wrote:

> Per the building bylaw a permit is not required for minor repairs or alterations to non structural components of the building. Where a valve, faucet, fixture is repaired or replaced where no change in the piping is required, a permit is not required.
>
> All renovations I will be completing on my home fall under the above category. All renovations will be minor and non structural.

The tenants argued that the landlord was undertaking these renovations because it would make the residential property easier to sell. They submitted an e-mail from SS into evidence sent on September 7, 2022 in which he wrote:

> I need to open an important conversation with you.
>
> Interest rates have raised significantly the last few months, including a three point increase today by the bank of Canada.
>
> [Landlord AS] and I are now in a very difficult situation as the home is now costing us a significant amount and we are being driven quite in a hole money wise now, every month. The monthly cost of the home is unsustainable for us. In addition, as rates have gone up, the house value is being driven down. These two factors are very serious to us.
>
> We need to either increase the rent by at least 700 dollars a month or we will most likely need to sell the home. We will still be losing money at 700 but at least it will be manageable for us. The increase would also bring the home rent closer to the current market rates.

The tenants argued that it does not make sense that the landlords, who previously indicated they could not afford their mortgage payments, would be able to afford a large-scale renovation. They argued that the only way such renovation would make financial sense for the landlords was if the landlord intended to sell the residential property after completing them. They also argued that the landlord wanted to end their tenancy because they were paying below market rate for the rental unit.

SS denied that this was his intention, and testified that he had received help from family members to finance the cost of the renovations. He did concede that when the rental unit would be re-rented it “should be able to get market rate”.

The tenants testified that they would be willing to relocate in order to allow these renovations to be completed all at once or that they would be willing to relocate on a temporary basis to allow them to be completed in a piecemeal fashion.

Analysis

Section 49.2(1) of the Act sets out the mechanism by which the landlords could obtain an order of possession for undertaking a renovation or repairs. It states:

> **Director's orders: renovations or repairs**
> **49.2**(1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]*, 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.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlords must prove it is more likely than not that all four criteria set out at section 49.2(1) of the Act have been fulfilled. For the following reasons, based on the evidence submitted at the hearing, I cannot find that they have done this.

Residential Tenancy Branch (the "**RTB**") Policy Guideline 2B provides information about this type of application. It states:

> **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**

Renovations and repairs are important to the life cycle of a building. As buildings age this work is necessary to ensure the rental unit and the building in which it is located remain safe for the tenants. Some examples of these necessary renovations or repairs include:

- Undertaking seismic upgrades
- Updating electric wiring to code
- Installing or replacing a sprinkler system to ensure the building meets codes related to fire safety

I am not satisfied that, aside from the replacement of the windows, *any* of the renovations will prolong or sustain the use of the rental unit. The renovations are minor and cosmetic in nature and are being undertaken to "update" the rental unit. I am not satisfied that any updates are required to rental unit to prolong or sustain it. The rental unit may not be current with modern interior design trends, but I do not find that a rental unit being "out of date" is a sufficient reason to end the tenancy.

I accept that a more modern rental unit would be easier to rent out and would likely attract a higher monthly rent. However, as the rental unit is currently rented out, this is not a relevant factor.

I accept that the windows need to be replaced to sustain the use of the rental unit. However, this repair alone does not warrant ending the tenancy. There is nothing in evidence to suggest that vacant possession of the rental unit is required to undertake the repair.

Accordingly, I dismiss the landlords' application without leave to reapply.

Conclusion

I dismiss the landlords' application without leave to reapply. The tenancy shall continue.

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 20, 2023

Residential Tenancy Branch