



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1303049 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      PFR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, pursuant to section 49.2.

The applicant, represented by AH (the landlord), and tenant JS (the tenant) attended the hearing. The tenant was assisted by advocate AH. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

### Preliminary Issue – Partial Withdrawal

Both parties agreed that tenants PN and DJ moved out. The landlord is not seeking an order of possession against tenants PN and DJ.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the application to remove tenants PN and DJ.

### Preliminary Issue – Service

The tenant confirmed receipt of the notice of hearing and the evidence (the materials).

The landlord confirmed receipt only of the March 16, 2023 affidavit.

The tenant believes that tenant DJ served the 20-page response evidence package to the landlord around March 15, 2023, including the March 16, 2023 affidavit.

Based on the testimony of the parties I find the landlord served the materials in accordance with section 89 of the Act.

Rules of Procedure 3.15 and 16 state:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

When a party cannot be served by any of the methods permitted under the Legislation, the Residential Tenancy Branch may order a substituted form of service.

[...]

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

Based on the tenant's vague testimony, I find the tenant failed to prove, on a balance of probabilities, that the landlord was served the 20-page response evidence. I accepted the March 16, 2023 affidavit and excluded the remaining response evidence, per Rule of Procedure 3.15.

### Issue to be Decided

Is the landlord entitled to order of possession in order to perform renovations or repair that require the rental unit to be vacant?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing periodic tenancy started on May 01, 2006. Monthly rent is \$661.00, due on the first day of the month. The landlord holds in trust a security deposit in the amount of \$215.00.

The rental unit is a one bedroom, 400 square feet apartment. The kitchen and living are an open space. The rental building is from 1962 and the landlord purchased it in April 2021. There are seven one bedroom units of similar size and one three bedroom unit in the rental building.

The landlord lived most of his life a few blocks from the rental building and he is not aware of a major renovation. The landlord affirmed that all the electrical installation and plumbing are original from 1962. The landlord started renovating all the rental units after April 2021 and the only units missing are units 2, 3, and 7.

The landlord will substitute all the electrical wiring and plumbing system, as the current ones are from 1962 and are not up to code. The landlord needs to remove all the drywall to install the new wiring and plumbing. The landlord will also replace the cabinetry, and flooring and install a range hood fan and a bathroom fan.

The landlord stated that since April 2021 several units had leaky pipes, frozen pipes in the winter and toilets backed up. The tenant testified that he had a water leak, and his toilet was repaired once after April 2021.

The landlord said the electrical wiring is 60 amp and it needs to be upgraded. The tenant affirmed he has not had issues with the electrical wiring.

The landlord stated that the rental unit currently does not have a range hood fan and a bathroom fan and the rental unit has moisture issues.

The landlord testified the drywall contains asbestos and it is necessary to install new drywall without asbestos. The landlord will replace all the drywall.

The landlord said that the renovation is necessary to maintain the rental unit and increase its longevity.

The landlord affirmed that he cannot complete the necessary work with the tenant occupying the rental unit, as all the drywall must be removed and the rental unit will not have water or electricity for 4 to 5 months and the asbestos is a health threat to the tenant. It will take longer to remove the drywall because of asbestos. It takes approximately 3 weeks to remove the drywall and the weather impacts the renovation.

The landlord stated that it is not possible to conduct the renovation one room at a time, as the unit is small, and all the work needs to be done at the same time.

The landlord testified that he worked for 4 to 5 months on the 5 units already renovated. The landlord said that it is very hard to find contractors in the rental unit's small town, and the contractors often do not start the work or complete it within the planned time.

The tenant affirmed the other units could have been renovated in a shorter time if the landlord hired extra contractors and there are contractors advertising their services. The tenant stated the drywall can be removed in a couple of days. The landlord testified that he hired several contractors for the renovation that he already conducted.

The tenant said that unit 1 was renovated in one month. The landlord affirmed that it was renovated in two months because the drywall did not need to be removed.

The tenant from unit 2 moved out on March 11, the landlord started renovating that unit on March 13 and the work has not been completed. The drywall removal was suspended by WorkSafe BC due to the presence of asbestos.

The tenant from unit 7 moved out on April 01, 2023 and the landlord started renovating that unit on April 16, 2023.

The landlord estimates he will spend between \$50,000.00 and \$60,000.00 to renovate the unit.

The landlord stated that he has the permits necessary for the renovation. The landlord submitted a permit application dated October 19, 2022 for replacing the electrical wiring, plumbing and drywall and the permit issued in November 2022 and an electrical installation permit issued on November 03, 2022.

The landlord submitted photographs taken in April 2021 showing the rental unit and the renovation in the other units. The photographs show old pipes and electrical installation.

The landlord testified that he secured electrical and plumbing contractors for the renovation.

The letter dated November 1, 2022 states:

My name is [redacted for privacy]. I am a certified carpenter under the North American Apprenticeship Program (1984).

**I am confirming that I have been hired by [the landlord] to do renovations and repairs at [rental unit's address].** Renovations on this 8 unit building began in April 2021. The exterior and 5 of 8 units have been extensively renovated. Units #2, #3 and #7 remain to be repaired and renovated. **In my professional opinion, this building was/is in need of a significant renovation and repair. The building and the units have been neglected over the years by the prior owner and tenants. Many of the components of the building need to be replaced/repaired. This includes but not limited to: entire plumbing, all electrical, flooring, drywall, insulation, roofing, windows etc.** There is evidence of failed plumbing behind the walls which has caused them to leak and cause drywall damage, insulation damage, floor boards rotting etc.

**The renovations thus far have been quite significant and have been completed with units being vacant. Based on my experience and opinion, the only way to complete the renovations on the remaining units is for them to be vacant also. It would be physically and practically impossible to replace and repair any other**

**way. To complete one unit last year was estimated to take about 3 to 4 months in total. But actually, ended up taking just well over 4 months.** I anticipate it taking longer to renovate the remaining units as trades are more in demand than ever due to Covid and the recent flood damage in [rental unit's city]. **Renovations can take up to 6 months. There are just a few trades in town and bringing in trades from outside [redacted] has proven difficult.** The scope of work is for a full interior renovation and repair by gutting down to the studs removing all insulation and drywall including the ceiling drywall.

[emphasis added]

The letter dated November 2, 2022 states:

I confirm that I have been retained by [the landlord] to carry out plumbing work at [rental unit's address]. I also confirm that I am certified and licensed. Majority of the work began in April 2021 and is ongoing.

I know this building quite well as I've worked on it for well over 10 years. The building is quite old and the plumbing and heating system requires updating. Throughout this renovation, I have found broken pipes and leaky pipes which have cause damage to drywall and flooring. I have been regularly called to service repairs to Unit #2, #3 and #7. There have been a wide range plumbing and heating issues, such as pipes freezing, pipes cracking, toilet failures causing leaks and rot, gas heater failures (old and need to be replaced). Plumbing and heating in these units are to be updated completely once all drywall and insulation removed.

The landlord served a 4 month notice to end tenancy (the Notice) in 2021. The Notice was cancelled by the RTB (the file number is recorded on the cover page of this decision). The decision states:

I find that the list of proposed work the landlord submitted to the municipality omits issues mentioned in the 4 Month Notices. In the notices the landlord states the proposed work includes "Foundation correction. Roof repair. Not just shingles, but may require structural work." In their correspondence to the municipality the landlord makes no mention of structural concerns and writes, "Some of work I'm looking at doing is the following: Re-roof (shingles only)".

The correspondence from the municipality states, "If the renovation list is restricted to the items shown you may not require a permit. If items are added or if the renovation disturbs existing finishes within the building, a permit will be required." I find a plain interpretation of the correspondence does not show that permits are not required for the renovations and repairs contemplated by the landlord. Even if the landlord

restricted their work to those items listed the municipality does not state that no permits are required but simply that that they “may not” be required.

I find the correspondence to be insufficient evidence to support the landlord’s position that permits are not required by law for the work contemplated in the 4 Month Notices. I find that the list of work provided by the landlord to the municipality does not include items listed on the 4 Month Notices and the difference in the scope of the proposed work varies to a degree that the written statement is of little use to support the landlord’s submissions.

Based on the evidence I am not satisfied that the landlord had any permits required by law at the time that the 4 Month Notices were issued. I further find insufficient evidence to support the landlord’s position that no permits are required as the correspondence with the municipality is dated after the date of the notices, does not unequivocally state that no permits are required, and is in response to a list of proposed work that differs from the list provided on the 4 Month Notices.

Based on the foregoing I find that the landlord has not met their evidentiary onus on a balance of probabilities to establish that there is a basis for the tenancies to end.

Consequently, I allow the tenants’ applications and cancel the 4 Month Notices as against Units 2, 3, and 7 of the rental property. The Notices are of no further force or effect and these tenancies continue until ended in accordance with the Act.

The tenant is willing to move out for the duration of the renovation work, but not to terminate the tenancy.

### Analysis

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.

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 section 49.2 apply.

RTB Policy Guideline 2B provides the following information regarding an application for an order of possession under section 49.2:

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.

[...]

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 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

[...]

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.

[...]



If the tenancy is being ended under section 49.2 and the residential property has 5 or more rental units, the tenant is entitled to enter into a new tenancy agreement for the rental unit that takes effect once renovations or repairs are complete. The tenant must give the landlord notice that they want to be able to exercise this right by completing form #RTB-28 "Tenant Notice: Exercising Right of First Refusal". The tenant must give the completed form to the landlord before vacating the rental unit.

If the tenant does not exercise their right of first refusal by entering into a new tenancy agreement on or before the availability date set out in the "45 Day Notice of Availability" form, the tenant has no further rights respecting the rental unit. The landlord may then rent it to another tenant.

Per section 49.2(2) of the Act, the landlord must make a single application for orders of possession for all the units. I accept the landlord already started renovating all the units in the rental building, except the tenant's unit. Thus, I find this application meets the requirement of section 49.2(2) of the Act.

RTB policy guideline 40 states that the useful life of drywall is 20 years, electrical installation wiring is 25 years and plumbing is up to 25 years.

I note the rental unit was built in 1962 and the drywall, electrical installation and plumbing are way beyond their useful life. Furthermore, the rental unit had a water leak and the toilet was repaired since April 2021. Based on the landlord's convincing testimony, the letters dated November 1 and 2, 2023 and the permits dated November 2022 and November 3, 2022 I find the renovation is necessary to sustain the use of the rental unit.

I accept the uncontested testimony that the rental unit has not had a renovation since 1962. I accept that the landlord has the permits necessary for the renovation necessary to sustain the use of the rental unit, per section 49.2(1)(a) and (c) of the Act.

I find the landlord's testimony about the difficulties to hire contractors more convincing than the tenant's testimony. The tenant did not submit the contractors' advertisements.

Based on the landlord's convincing testimony and the letters dated November 1 and 2, 2022, I find the landlord will need at least 4 months to complete the vast renovation work. The renovation work is long (replacing electrical and plumbing installation and

drywalls), the current drywall has asbestos and the work to remove it is longer because of asbestos.

RTB policy guideline 2B states that the work to fully rewire the rental unit causes significant disruption to tenants and may require vacancy and that replacing the interior walls causes significant disruption and is likely to require vacancy.

Based on the landlord's convincing testimony, I find that the rental unit will not have water and electrical services during the renovation and that it is not possible to complete the renovation one room at a time. Furthermore, the presence of asbestos in the drywall is a safety risk for the tenant. I find the landlord proved, on a balance of probabilities, that the rental unit needs to be vacant for the renovations and the only way to achieve the necessary vacancy is to end the tenancy, per section 49.2(1)(b) and (d) of the Act.

I accept the landlord's uncontested testimony that he will spend between \$50,000.00 and \$60,000.00 to renovate the unit. I find this is a significant amount of money for a renovation.

The tenant's willingness to move out for the duration of the renovation work is not a reason to dismiss the application, as stated in RTB Policy Guideline 2B:

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.

Considering the above reasons, I am satisfied that all the considerations set out in section 49.2(1) of the Act apply. The Landlord's application to end the tenancy and receive an order of possession for the rental unit is granted. I grant the landlord an order

of possession effective on August 31, 2023, in accordance with section 49.2(4) of the Act.

The Tenant has a right of first refusal and must give the Landlord notice that they want to exercise this right by serving the landlord form #RTB-28 before vacating the rental unit.

### Conclusion

The Landlord's request for an order of possession for the rental unit in order to perform renovations that require the rental unit to be vacant is granted. I grant the landlord an order of possession effective on August 31, 2023. The landlord must serve the tenant 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 *Residential Tenancy Act*.

Dated: April 19, 2023

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Residential Tenancy Branch