



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

The Landlord made their Application on November 24, 2022 for an order of possession for a single rental unit, so they could perform renovations or repairs that require the rental unit to be vacant, under s. 49.2(1) of the *Residential Tenancy Act* (the “Act”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 17, 2023. In the conference call hearing I explained the process and provided the parties that attended the opportunity to ask questions, present oral testimony and make submissions during the hearing. At the start of the hearing, the Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, in addition to the Landlord’s evidence. The Tenant did not provide documents or other material as evidence for this hearing.

Issue to be Decided:

- Is the Landlord entitled to an Order of Possession to perform renovations or repairs, pursuant to s. 49.2 of the *Act*?

Background and Evidence

In the hearing, the Landlord presented that they bought this rental unit in 2020. The Tenant already resided in the rental unit at that time. The Landlord did not end this tenancy when they purchased the rental unit; however, their plan was to have the rental unit ready for their child’s own use when that son turned an appropriate age.

The tenancy as it currently exists is on a month-to-month basis, with the Tenant in place in the rental unit since 2011. The Tenant stated they had no concrete plans in the works to move as

of the date of the hearing. The Tenant acknowledged they had an earlier discussion about this matter with the Landlord.

The Landlord stated another family member will be doing the renovation work within the rental unit. They listed the following on their Application:

- kitchen upgrade: replace cabinets, countertop, sink, and install new appliances
- bathroom upgrade: replace vanity, sink, cabinet, lighting, and shower tub
- flooring upgrade: replace carpet with laminate flooring (underlay grade required by strata)
- entire unit: replace closet doors in bedrooms and living rooms
- paint entire unit

The Landlord did not provide an estimate of the time involved for these changes within the rental unit. They stated their family member had no set schedule on when they would be performing the work. To describe their need for vacant possession, the Landlord stated they would “like to come and go, without someone else there”.

The Tenant stated their understanding that the work involved could be undertaken much easier if the rental unit was vacant. They stated their primary concern is having enough time to find other accommodation, considering location and cost.

The Landlord presented that they brought the matter to the strata council in the rental unit property. They obtained approval from the strata on November 23, 2022. The strata required specifically an ‘assumption of liability form’ (not in the Landlord’s evidence) that shows the Landlord would comply with the strata’s rules and regulations, and also that they hired competent workmen to complete the work. The Landlord was not informed by the strata about the need for permits or approvals for this type of work – with these being “indoor renovations”, permits and approvals are not required.

Analysis

The *Act* s. 49.2(1) provides that a landlord may make an application for dispute resolution requesting an order to end a tenancy, and an order granting a landlord possession of a 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 the 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.

The *Residential Tenancy Policy Guidelines*, in particular *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.

The same policy guideline provides the following information on defining “renovations” or “repairs:

Vacancy Requirement

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 testimony and evidence provided by the Landlord, who bears the burden of proof on the issue of required vacant possession, I find as follows:

- The Landlord did not prove definitively that permits and approvals from the local municipality are not required. The Landlord did not provide written confirmation from a local authority to prove this is the case. The strata do not constitute an authority on the matter of permits or approvals.
- I am not satisfied the work involved is of such a nature that it requires vacancy, due to no proof that the work makes it unsafe for the Tenant to remain.
- There is no proof the Tenant cannot stay in the rental unit while the work is being completed, minus some discomfort or temporary loss of use of some parts of the rental unit.
- The work is cosmetic in nature, not requiring major structural changes or other hazardous work that makes the unit unlivable.
- The testimony of the Landlord shows they are seeking to end the tenancy as a matter of convenience for completion of this work, *i.e.*, wanting to undertake the work when and as they please.
- I find the Landlord’s overall aim is for their own use of the unit by a family member and this end-of-tenancy process for renovation or repairs is not, strictly speaking, in line with that purpose.
- The Landlord did not give sufficient detail of the work to show that it requires vacancy. Though the Landlord gave a summary of room-by-room work, I find the work involved is not that which requires vacancy simply for completion of that work.

- The Landlord did not provide evidence to show why such work could not be completed in phases, rather than have complete vacancy for their own convenience.
- Additionally, the Landlord did not show the timeframe would be prolonged to such an extent that the Tenant could not take up residence elsewhere for a brief period while the essential work was completed.

In summary, I find the Landlord has not met the onus to prove that the tenancy must end, pursuant to s. 49.2(1) of the *Act*, for the above noted reasons. I dismiss the Landlord's Application, without leave to reapply.

Conclusion

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 s. 9.1(1) of the *Act*.

Dated: May 17, 2023

Residential Tenancy Branch