



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

The landlord seeks orders under section 49.2 of the Residential Tenancy Act (the “Act”).

Issue(s) to be Decided

Is the landlord entitled to an order of possession for renovation or repairs?

Background and Evidence

The landlord gave the following testimony. The landlord testified that the local zoning bylaws have changed that would allow her to make her in-law suite into a legal two bedroom unit. The landlord testified that her sister presently lives in the unit with her family and pays \$1598.00 per month in rent. The landlord testified that the unit needs several items to come into compliance with a legal suite. The biggest issue is to install half inch drywall in the ceiling and resilient channel. The landlord submits that that work will take 16-20 days to complete. The landlord submits that the issue is the type of work, not the length it will take to complete. The landlord submits that it will be very dirty, dusty and that the tenants will be without the kitchen or bathroom.

The tenant gave the following testimony. The tenant testified that she is willing to move out for a short time to allow the work to be done but asks for reasonable notice. The tenant testified that she has been given various amounts of notice to move out from one day to ten. The tenant testified that she has disabilities and needs some assistance to accommodate. The tenant testified that she doesn't understand why her sister wants to do this work and why there is such an urgency since she already lives in the unit, pays

the rent and meets the requirements to have an in-law suite as she is family and has a disability.

Analysis

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.

Section 49.2 allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. Any period of time in which the unit must be vacant is sufficient to meet this requirement.

Residential Tenancy Policy Guideline 2B states the following.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”. Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time.

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. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

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.

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 landlord has not provided sufficient evidence to prove all four of the above required criteria, specifically, 49.2(c) and 49.2(d) The unit is being used by her sister and she is paying rent in full and on time, there is no dispute of that. In addition, the unit is by all accounts, in good condition not requiring any renovations, but rather, small repairs.

The landlord was unable to provide a logical reason as to why this renovation was required other than stating the new zoning allows for it. Furthermore, the landlord has not provided sufficient evidence that the unit is to be empty for renovations that would take 16-20 days to complete. Based on all the evidence before me, the landlord has failed to provide sufficient evidence to prove their claim.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: May 18, 2023

Residential Tenancy Branch