



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1304098 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) for an order of possession pursuant to section 49.2(1) of the Act, which 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.

Those attending the hearing are listed on the cover page of this decision and on the Interim Decision dated May 23, 2023, the latter of which should be read in conjunction with this decision. At the start of the hearing, I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As all parties confirmed being served with relevant documentary evidence, I find there are no service issues.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issue to be Decided

- Has the landlord provided sufficient evidence to support that an order of possession should be granted and which if granted, would be effective not earlier than 4 months after the date the order is made and comply with section 49.2(4) of the Act?

Background and Evidence

Out of all tenancies subject to this hearing, there is only one fixed-term tenancy that ends on September 23, 2023, which is before the time in which 4-month order of possession would be granted in any event. The landlord has applied for an order of possession pursuant to section 49.2(1) of the Act.

Landlord's submission and evidence

The landlord purchased the building in June 2021, which is located in Prince Rupert. The building was built in the 1960's and has little to now improvements since being built. One document reads as follows:

The previous owners had neglected the buildings to the extent that Block A had water damage from a storm and ended up being demolished by the previous owners and was not replaced which eliminated 11 rental suites from the site. Over the past year and a half, it has become obvious to us that they were not spending the necessary funds to keep the buildings in good repair. We have discovered many issues specifically, water damage, mold, rotten floor joists and wall joists, large unrepaired holes in walls after plumbing repairs, rodent infestation, bed bug infestations, highly inefficient boilers that break down regularly, water leaks popping up weekly in both domestic and heating system, single pane windows providing poor insulation from elements etc. We are seeking to take possession of (B Block #610 Evergreen Dr.) to do the necessary

renovations/upgrades to the building to provide safe, efficient and cost-effective rental housing in the long term. The building has 6 3-bedroom units and 5 2-bedroom units plus Office space and laundry room and storage. One Unit is Vacant. After successfully running the apartments over the past year and half we have come to the realization that we will need to invest heavily to achieve our long-term goal as stated above. We are aware of our obligations as landlords and would try to find suitable accommodation for the affected tenants in any vacant units we may have on the site. Our goal is to improve the building so that it meets today's standards to provide quality, safe, energy efficient rental housing for the community of Prince Rupert.

The plan of the landlord is submitted as follows:

Our plan is as follows:

The original copper piping is continually leaking throughout the units and common area (both domestic and Hydronic Heat piping) thus causing, loss of heat, flooding and mold, rotten joists and wall not to mention the inconvenience to the tenants. We have decided on removing all the copper piping (domestic and Hydronic Heating) and replacing the domestic piping throughout with PEX or similar. We will run new water piping from the main supply in the mechanical room on the main floor up and into each unit, install individual Hot Water tanks in each unit and tie those into the sewer line in the building, replumb each unit (Kitchen and Bathrooms) which will require us to open up walls in kitchen, storage and bathrooms. We are also removing the Natural Gas Boiler heat system and piping and replacing it with Electric heat (Electric Baseboard heating). To install Electric Heat, we must upgrade the original Main panel from 400AMP to 800AMP (see Electric Permit). We will also need to upgrade the original sub panels in each unit to 100AMP panels and need to cut into drywall and run wiring throughout the unit in order to install the Baseboards in every room. There will be a lot of interior walls cut open to remove the old and install the new plumbing and wiring. Likely there will be asbestos in the drywall mud as is quite typical of buildings built in this era. While we are replacing the heating, electrical and plumbing throughout the building we will be updating the units as well with new flooring, kitchens, bathrooms, windows, siding, paint, roof etc. We anticipate this project to last 5-6 months and the buildings to be without power, water and heat for a majority of this time which would make them uninhabitable. Therefore, we are requesting vacant possession in order to proceed with the scope of work outlined above and, in more detail, below. We

feel that this falls in line with the Residential Tenancy Board's guidelines for vacancy for renovations.

Project Scope of Work Detailed

PLUMBING:

Replumb Domestic Pipe	Per Block - Replace existing copper piping with PEX or similar
Individual H/W Tanks	install individual H/W tank electric labour to install tanks and floor pan (tie into sewer line)
Labour	
New Shower faucet	labour included in repiping Labour to remove old piping and patch access holes/drywall
Labour	

Electrical

Upgrade main panel	upgrade main panel to 800AMP plus subpanels in each unit
electric base boards	baseboards heaters in each unit plus thermostats
Labour	install baseboards in each unit
Labour	removal of old hydronic baseboard heaters
Labour	patch access holes/drywall
New wiring	New wiring to support new subpanels and install electric baseboards.

Flooring

Unit flooring	9 units (5 3 bedroom + 4 2 Bedroom) 8000 sq ft laminate Labour to remove old flooring Dumpster Labour to install new flooring 3 days per unit (24 hours)
Common area + stairs	Laminate for 2nd & 3rd flooring hallways

	Stair treads
	Labour to install common area/stairs
Lino for Bathroom	heavy duty
Kitchen	
Appliances	30" fridge & stove 9 units
Countertops	Laminate 2 bedroom (2x8ft). 4 units
Countertops	3 bedrooms (2x10ft). 5 units
Labour	Install countertops & sink/faucet 16 hours unit (9)
Sink	Stainless sink and faucet
Paint cabinets	White
Light fixture	Track light
New cabinets	Sink, faucet and hood fan
Windows	
Large living room	3 bedrooms
Small living room	2 bedroom
Dining. Room	2 bedrooms
Bedroom	6 3-bedroom units (one completed)
	5 2-bedroom units, size as 3 bedrooms (one completed)
2 bedrooms	
Stairwell	8 stairwell windows
	Install bedroom windows 90 minutes per window (31)
Labour	one person
	Install Liv & Din windows (16) 3 people per @ 3 hours
Labour	p/window
Manlift rental	per week
Misc.	sealant and foam insulation
Finishing units	
Closet doors	Bifold for closets if needed
Baseboards	Full baseboards throughout units
	Install baseboards primed PDF 1 day per unit (8
Labour	hours)

Labour	Install closets
Paint	Semi gloss paint per unit plus white trim paint 2 quotes
Labour	4 days per unit 1 painter 40 hour
Drywall repairs	Drywall repairs throughout unit and common area
Blinds	Blinds for bedrooms
	For living room (3bedroom) and living and dining (2 bedroom)
Drapes	
Mold	Remove all signs of Mold with appropriate chemical and prime/paint

Bathroom	
Tub surround	Required for 9 units
Labour	Repair walls behind tub surround
Vanity	Stand alone vanity
Medicine cabinet	With mirror
Toilet	New toilet and lid
Fan	New fan
Light	New lighting fixture
Lino	Install Lino in bathrooms

Painting Exterior	
Pressure wash/prep	Repair some boards and prep for paint 120 hours 2 workers
Manlift	Manlift for painting and repairing 3 weeks
	2 coats of Acrylic Latex weather paint & trim 50 gallons per coat
Paint exterior	
Paint trim	Trim. Paint
Labour paint	2 people

Miscellaneous	
NEW ROOF	New Roof and flashing on B Block
Entrance keypad	new keypad on Front entrance
lockset on back	one way door lock on back door
Steel Siding	W/F 7/8 Corrugated Steel Siding 26 gauge

The following permits were also submitted in evidence:

1. Building permit
2. Plumbing permit
3. Electrical permit

In addition, the landlord submitted an Asbestos report, which has been reviewed and confirms asbestos is present in walls, ceiling and vinyl tile.

Counsel confirmed that the permits have been extended until December 31, 2023.

Many photos were submitted in support of the need for the extensive work being proposed. Counsel stated that the landlord is a reluctant landlord who is not happy about doing a \$500,000 repair job since purchasing the building in 2021 but feels sincerely that the work is required to avoid a similar building that ended up falling in on itself. The landlord denies any arguments about lack of good faith and that the work is required for the safety of all tenants and the heating requirements in Prince Rupert, which differ from the lower mainland.

The landlord summarized that the current building as it stands is beyond its useful life and requires this work as soon as possible. The landlord reiterated throughout the hearing that to date have only been patchwork repairs and that leaks continue; the boiler system has failed and will not work this winter due to the copper piping corroding and leaking. The landlord submits that repairs have been weekly if not daily between failing boilers, wiring repairs, plumbing failures, etc.

Tenants' submissions and evidence

The advocate raised the issue of good faith if the landlord has re-rented some units that were already vacant. The landlord responded to this by stating that they are entitled to recoup some money in the interim period before a decision on the application is made. The landlord clarified that none of the tenancies will extend beyond the effective date of a 4 Month Notice, if granted.

The advocate questioned the landlord regarding cosmetic repairs or upgrades to units in the building. The landlord responded by stating that for them to re-rent in the interim those repairs or upgrades were needed but that significant work throughout the building including replacement of drywall, copper wiring, electrical, etc. must take place throughout the building, which requires the building to be vacant.

The advocate asked why a permit for the exterior cladding was not obtained. Counsel and the landlord stated that permits are not required for work that does not require vacant possession of the building and that exterior cladding can be done with tenants in the building.

The advocate stated that the landlord is not showing good faith by using a rental unit previously rented for \$650 and is now renting it for \$850 and referred to RTB Policy Guideline 2B (Guideline 2B) as follows but neglected to state the bolded portion:

If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent **without carrying out renovations or repairs that require the vacancy of the unit**, the landlord would not be acting in good faith.

(emphasis added in bold)

Counsel responded by identifying the omission of the advocate and that the bolded portion noted above must be read in conjunction with Guideline 2B.

The advocate stated that the creation of sub-leases to rent units that were vacant should result in the dismissal of the application for that reason alone. The advocate alleges that the landlord is attempting to work outside of the Act and violate the month-to-month tenancy requires of the Act.

The landlord responded to this allegation during the hearing by stating that the month-to-month agreements are made with their staff who plan to sign mutual agreements to end any sub-lease tenancy if the application is approved and if an order of possession is granted.

There is no dispute that the tenant of 201, A.F. has submitted a request for Right of First Refusal to the landlord.

Quotes during the total cost of the project during the hearing ranged from \$350,000 to \$500,000.

Counsel stated that the advocate provided no reports to counter the landlord's significant documentary evidence. The landlord stated that since the first portion of the hearing on May 19, 2023, there have been additional water leaks in the building.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 49.2(1) of the Act applies and states:

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;
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- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

[emphasis added]

After careful consideration of all the evidence before me, I find the landlord has provided sufficient evidence that all four parts named above from A to D have been met and that all tenancies must end as a result to permit all of the necessary work required. I also find that there was an undisputed comment by the landlord that the building could fall in on itself given the sheer volume of the work required and that to not do this work would be irresponsible to deny.

I afford no weight to the advocate's arguments that the landlord is acting in bad faith by re-renting in the interim as the Act does not require the landlord to incur more loss and I find that the tenancies are made with staff working for the landlord and that the Act does allow tenancies to end by mutual agreement at any time.

In addition, I afford no weight to the advocate's arguments that the landlord does not have all the permits required, as Guideline 2B does not require permits that do not relate to vacant possession. I agree with counsel and the landlord that exterior cladding permits are not required for this application.

Furthermore, I afford no weight to the advocate's argument that the rent was increased proving bad faith as I find the advocate omitted key wording from Guideline 2B which was highlighted above and that the tenant has provided insufficient evidence that the

landlord has no intent to carry out the renovation or repairs planned. Therefore, I find there is insufficient evidence of bad faith in this matter.

While I understand this will create a hardship on the tenants, the Act does not contain a hardship clause that would prevent an order of possession from being issued. **The landlord is required to compensate the tenants as per section 51.4 of the Act.** Given the above, section 49.2 (3) and 49.2 (4) of the Act apply and states:

49.2(3) **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 subsection (1) apply.**

(4) **An order granted under this section must have an effective date that is**
(a) **not earlier than 4 months after the date the order is made,**
(b) **the day before the day in the month,** or in the other period on which the tenancy is based, **that rent is payable under the tenancy agreement, and**
(c) **if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.**
[emphasis added]

Given the above, I grant the landlord an order of possession effective **October 31, 2023 at 1:00 PM.** This date is a full 4 months past the date of this decision, June 28, 2023.

The landlord must serve a copy of the attached Order of Possession on the tenants as soon as possible.

Conclusion

The landlord's application is successful.

The tenancy must end due to renovations and repairs that require vacant possession.

The landlord has been granted an order of possession effective October 31, 2023 at 1:00 PM. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to both parties as indicated above. The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 28, 2023

Residential Tenancy Branch