



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On February 1, 2023, the landlord applied for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* (“the Act”) requesting an Order of Possession for the rental unit, a duplex, to perform renovations or repairs requiring vacancy.

I provided opportunity to the landlord to be heard, present sworn testimony, make submissions, and call witnesses.

I informed the landlord about the RTB Rules of Procedure including expectations of behaviour (Rule 6.10) and prohibition of recording the hearing (Rule 6.11).

Service

The hearing lasted 90 minutes. The landlord gave the tenant information on how to call into the hearing. The tenant did not attend.

As the tenant did not attend the hearing which lasted 90 minutes, the landlord testified the tenant was informed of the hearing date and was given all documents.

The landlord testified their agent BG personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on February 16, 2023. The landlord submitted a supporting Proof of Service document in the RTB form signed by BG. The tenant’s subsequent evidence package of May 9, 2023 was served by express mail on

the tenant and was delivered by Canada Post on May 12, 2023. The landlord provided the tracking number and testified it was delivered to the tenant.

The landlord stated the parties discussed the repairs and proposed vacancy. No settlement was reached.

In accordance with sections 88 and 89 of the *Act*, I find that the tenant was served in compliance with the *Act*.

Issue to be Decided.

Does the tenancy need to end for the landlord to perform renovations or repairs that require the rental unit to be vacant?

Do I grant an Order of Possession to the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the submissions are reproduced here. The main aspects of this application and my findings are set out.

The landlord requested an end to the tenancy and an Order of Possession.

Tenancy

The landlord testified they purchased the unit 12 years ago and the tenant lived in the unit at that time. The landlord did not submit a copy of the tenancy agreement. Rent is \$800.00 monthly.

Landlord's Claims

1. The landlord's unit is a duplex rented to the tenant.
2. The unit is more than 50 years old. The landlord has carried out only cosmetic or urgent repairs in the 12 years since he purchased the unit.

3. A roof leak in 2022 and subsequent damage to the unit revealed extensive need for repairs. The water damage compromised aspects of the building's envelope and fire rating compliance. Insurance will not cover the repairs, or removal of drywall, mold, asbestos, or lead paint which were subsequently discovered.
4. The landlord submitted a copy of a report dated September 2022 prepared by an environmental health and safety company following a comprehensive investigation of the unit. The report includes many pictures, charts, analysis, schematic drawings, and findings.. The report concluded the unit throughout contains asbestos, lead paint and water damage requiring vacancy for repairs. Certified trades will be required to assess, remove, and restore conditions where these materials exist.
5. Based on the report, the landlord said they need vacant possession to complete the required extensive renovations or repairs which will almost demolish the structure:
 - (a) Replacement of the roof
 - (b) Removal and replacement of drywall, all of which has been water damaged causing mold
 - (c) Removal of all asbestos found throughout the building, including walls and flooring
 - (d) Removal of all lead paint found throughout the interior and exterior of the building
6. During the repair work, all persons in the unit must wear hazardous materials protective suits. Repairs cannot take place one room at a time to allow occupancy to continue. There will be no drinking water or electricity in the unit during repairs. Therefore, the tenant cannot continue to live in the unit during repair work.
7. The landlord intends to begin renovations with a contractor as soon as possible. The landlord estimated the work will take 12 months. Further damage, such as to the electrical system, may be discovered after work begins.
8. The landlord has obtained all necessary permits and approvals to complete the work. The landlord obtained a permit for the removal of the walls and roof structure dated March 29, 2023, a copy of which was submitted. Further permits may be necessary as the work is carried out.

Analysis

Section 49.2(1) of the Act provides that the Director must grant an Order for Possession if all of four circumstances exist:

1. The landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required to carry them out.
2. The renovations or repairs require the unit to be vacant.
3. The renovations or repairs are necessary to keep using the rental unit or the building.
4. The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

A landlord has an obligation to maintain a rental unit to comply with health, safety and housing standards and is suitable for occupation.

Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides information about the necessary good faith of the landlord.

The Policy Guideline says the landlord must act in good faith. That is, the landlord intends to do what they say they are going to do. They are not trying to defraud or deceive the tenant and have no ulterior purpose for ending the tenancy. They are not trying to avoid their legal obligations.

The Policy Guideline states the repairs must be more than temporary or intermittent. They must objectively require the unit to be vacant. The Guideline provides the example of extensive asbestos remediation, or when there will be prolonged loss of a service, such as electricity.

Findings

I find the landlord is entitled to an Order of Possession.

The landlord has met the burden of proof for their application. That is, they have established their case on a balance of probabilities, meaning something is more likely than not to be true.

The landlord's testimony and supporting documents show that extensive repairs and remediation are required in the unit. The unit will be almost demolished to remove the roof, drywall, asbestos and exterior.

There is no suggestion that the landlord has any other motive than to repair an aged building in serious need of repairs, especially since it has incurred significant water damage already.

The landlord's estimate of 12 months to carry out the repairs appears reasonable given the nature and extent of the work. As well, there will be no running water or electricity in the unit while the work takes place. There is significant removal of hazardous materials, such as asbestos. It is clear no one can live in the unit while the repairs take place.

I find the landlord cannot perform the work in stages, such as carrying out removal of one hazardous material at a time or repairing one room at a time.

As the unit has sustained significant damage, the landlord's sense of urgency is justified. Insurance coverage is at risk.

I find that the landlord has met the significant burden of proof to support that this application was made in good faith, and they require complete and vacant possession of the rental unit for urgent necessary repairs.

I have weighed the rights of the tenant and the landlord's obligation to repair. I find the landlord does not have any other choice but to begin repairs in a vacant unit as soon as possible. I do not find that the landlord has a reasonable alternative.

I have considered the evidence before me, and I am satisfied that all the considerations set out in section 49.2(1) of the Act apply.

Therefore, I grant the landlord an Order of Possession effective October 31, 2023, at 1:00 pm.

Conclusion

The landlord's request for an Order of Possession is granted effective 1:00 pm October 31, 2023. This Order of Possession must be served on the tenant.

Should the tenant(s) and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 07, 2023

Residential Tenancy Branch