



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HOMAX REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on March 29, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Vacant possession of the rental unit, under section 49.2 of the Act, to perform renovations or repairs.

The hearing was convened by telephone conference call at 9:30 am on July 27, 2023, and was attended by the Tenant. All testimony provided was affirmed. The Tenant acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and raised no concerns regarding the service date or method. As a result, I find them duly served in accordance with the Act and the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). Pursuant to rule 7.3 of the Rules of Procedure, the hearing proceeded as scheduled despite the absence of an agent acting on behalf of the Landlord.

The Tenant stated that their documentary evidence was emailed to the Landlord on July 14, 2023, and that they received a reply email that same day acknowledging receipt and containing the documentary evidence before me from the Landlord. Based on the Tenant's affirmed testimony, and in the absence of any evidence to the contrary, I find the parties sufficiently served with each other's documentary evidence on July 14, 2023, pursuant to sections 71(2)(b) and (c) of the Act.

The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing. The Tenant was advised that interruptions and inappropriate behavior would not be

permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenant was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Tenant was also advised that personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to vacant possession of the rental unit, under section 49.2 of the Act, to perform renovations or repairs?

Background and Evidence

The Tenant acknowledged that renovations and repairs to the rental unit and property in which it is located may be necessary, and stated that they are not opposed to their completion. However, the Tenant stated that none of the renovations proposed, such as the replacement of windows and several interior doors, meet the requirements set out under section 49.2 of the Act for ending the tenancy. The Tenant stated that none of the renovations or repairs proposed require the rental unit to be vacant and argued that they are not necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located.

The Tenant stated that the stairs the Landlord argues must be installed between their unit and the basement already exist, and have simply been covered over with flooring and a built-in desk in their rental unit. The Tenant stated that the Landlord simply needs to remove the portions of the flooring and the built in desk covering the top of the stairs, which they argued would not require vacant possession of the rental unit, and is anticipated to take no more than two to three days, as set out in an e-mail from the Landlord's agent.

No one appeared on behalf of the Landlord to make any arguments or to present any evidence in support of the Landlord's Application.

Analysis

The ending of a tenancy is a serious matter and when a landlord seeks an order of possession from the Residential Tenancy Branch (Branch) under section 49.2 of the Act, the landlord bears the burden of proof to satisfy the arbitrator that they intend in good faith to renovate or repair the rental unit, that they have all necessary permits and approvals required by law to carry out the renovations or repairs, that the renovations or repairs require the rental unit to be vacant, that 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, and that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

As neither the Landlord nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Landlord's Application, I find that the Landlord has failed to satisfy me of any of the above. Further to this, the Tenant appeared at the hearing and explicitly argued that the Landlord does not have grounds under section 49.2 of the Act to end this tenancy for the proposed renovations or repairs as they do not require the rental unit to be vacant and are not necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located. I accept this as fact.

In addition, the Landlord submitted only the first page of a three-page building permit issued on May 9, 2022, which is more than one year prior to today's date. I do not have a complete copy of the building permit before me, nor any information regarding whether this building permit is still valid. As a result, I find that even if I had been satisfied that the renovations or repairs would require the rental unit to be vacant and that they are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located, which I am not, I would not be satisfied that the Landlord has all the necessary permits and approvals required by law to carry out the renovations or repairs.

Based on the above, I find that the Landlord does not have grounds under section 49.2 of the Act to end the tenancy for the proposed renovations and repairs, or in relation to the incomplete building permit submitted. I therefore dismiss the Landlord's Application without leave to reapply and the Landlord is cautioned that they cannot re-apply based on the same renovations, repairs, or building permit in the future.

Conclusion

The Landlord's Application seeking vacant possession of the rental unit, under section 49.2 of the Act, to perform renovations or repairs, is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: July 27, 2023

Residential Tenancy Branch