



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ASPEN INVESTMENTS INTERNATIONAL
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

On March 30, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 49.2 of the *Residential Tenancy Act* (the “Act”).

F.C. attended the hearing as the owner of the rental unit, with G.P. and M.W. attending as agents for the Landlord. Both Tenants attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages was discussed, and there were no issues concerning service. As such, I have accepted all of the parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession under Section 49.2 of the *Act*?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on April 1, 2021, and that the Landlord purchased the rental unit on or around April 28, 2022. Rent is currently established at an amount of \$3,260.00 per month and is due on the first day of each month. A security deposit of \$1,630.00 and a pet damage deposit of \$1,630.00 were also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence for consideration.

In the Application, the Landlord was asked to describe the renovations and why vacant possession is required. The Landlord provided the following written submission:

Drywall cutting required to upgrade existing service from 100amps to 200amps, remove knob and tubes. House needs to be re-wired. Asbestos and metal need to be removed due to health hazard, Nucor Environmental to work around the electrical re-wiring. **[Reproduced exactly as written]**

G.P. advised that the rental unit was built in 1939, and that the electrical wiring was original to the home. When the house was purchased, he testified that it was discovered the electrical system was knob and tube wiring and that the Landlord would not be able to obtain fire insurance because of it. However, there was no documentary evidence to corroborate this statement regarding the insurance. He indicated that an inspection of the rental unit was conducted on May 30, 2022, where it was determined that the rental unit needed to be completely re-wired, that in order to do so, the lead paint in the walls would need to be remediated, that the potential for asbestos is high, and that this can only be determined when the walls are opened. He estimated that this work would take approximately four to five months to complete and vacant possession is necessary as it is impossible to open the walls without exposing the Tenants to a health risk. He referenced the reports submitted as documentary evidence to support the need for

rewiring the electrical system, and to highlight the assessment of the materials in the walls, and the corresponding health danger should the Tenants be present during this process.

F.C. referred to the documentary evidence which corroborates the existence of hazardous materials contained within the walls, and he reiterated that in order to replace the electrical wiring, major holes in the walls are required. He advised that the rental unit is safe for occupation as long as the walls are not disturbed, but the danger of lead and asbestos exposure is only present when the necessary electrical work commences.

Tenant P.T. advised that an electrician attended the rental unit on May 19, 2022, and that the results of any inspections were not provided to them until a year later. She questioned how unsafe the rental unit was if they had lived there for a full year after these inspections. As well, this was the first time they were informed that the Landlord was not able to obtain fire insurance. While she acknowledged that the electrical system needs to be replaced, she testified that there were a number of repairs that they informed the Landlord of that were not addressed. She referenced documentary evidence submitted to support this position.

Tenant T.J. advised that the rental unit is not entirely knob and tube wiring, but approximately comprised of 80% knob and tube wiring. He testified that he spoke with contractors who informed him that fire insurance could still be obtained, but it would be expensive. While he acknowledged that he did not receive any confirmation from these contractors determining if the electrical system was or was not unsafe, he agreed that the wiring should be replaced. He also referenced a number of repair issues in the rental unit, and it is their position that this Application was not made in good faith as the Landlord has demonstrated an ongoing pattern of not engaging in repairs. He advised that they never made any Applications through the Residential Tenancy Branch to force the Landlord to make any necessary repairs as they did not want to be "combative".

F.C. advised that the process of obtaining reports and necessary permits take time, which accounted for the reason this Application was made after a year. He submitted that the Tenants had made issue of repairs that were requested years prior to when he purchased the property. He questioned why the Tenants did not do anything about these issues if they were such a significant problem in the past.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49.2 (1) of the *Act*, under which the Landlord makes this Application, states:

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.*

I find it important to note that the Landlord must provide evidence to prove each of the above-cited four elements. After reviewing the totality of the evidence before me, it is clear to me that the Landlord has all the necessary permits and approvals to rewire and upgrade the electrical system. As well, I find it reasonable to conclude that in order to do so, the walls would need to be significantly opened. Given the age of the property, and the Landlord's evidence of the hazardous materials that the walls are composed of, I accept that it would be likely that by repairing the electrical system, the materials in the walls would be disturbed and that this would pose a health risk to the Tenants, especially if asbestos is uncovered.

While I acknowledge the Tenants' submissions and skepticism about the Landlord's good faith intention, I note that they conceded that the electrical system required being replaced. Moreover, while it is entirely possible that some other repairs are required to

the rental unit, I question why the Tenants did not actively address these issues by way of an Application Ordering the Landlord to make repairs, if their concerns were so urgent.

Given the extensive nature of the upgrade and rewiring of the electrical system, which will likely involve demolishing walls and disturbing hazardous materials within them, it is reasonable to conclude that the rental unit will need to be vacant for at least four to five months to complete the entirety of the renovations, as it will not be safe for occupation during this time.

As Policy Guideline # 40 provides that the useful life of panel and wiring is 15 years and that the useful life of rewiring is 25 years, without any evidence that this has been done in over 80 years, I find that the type of upgrade to the electrical system being undertaken is necessary to both prolong and sustain the use of the rental unit. Furthermore, as this wiring has never been done before, and as it is likely well past its useful life, I find that this further supports a finding that this necessary repair would be undertaken in good faith.

Ultimately, it is my finding that the only reasonable way to complete this work and to achieve vacancy is to end the tenancy. Expecting the Tenants to continue to pay rent while the rental unit is uninhabitable for four-to-five months, or expecting the Landlord to “hold” the property and move the Tenants around during the renovations, would not be reasonable. To that end, ending the tenancy under this Section of the *Act* is the only reasonable option, in my opinion.

Having determined that all of the requirements in Section 49.2 (1) of the *Act* are met, I must grant an Order ending a tenancy and an Order of Possession. Therefore, it is Ordered that the tenancy will end on December 31, 2023, unless the Tenants choose to end it earlier under Section 50 of the *Act*.

An Order of Possession with an effective date of December 31, 2023, is issued with this Decision to the Landlord. The Landlord must serve a copy of the Order of Possession upon the Tenants no later than August 31, 2023.

Conclusion

The Application for an Order under Section 49.2 of the *Act* is granted.

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: August 23, 2023

Residential Tenancy Branch