



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1303725 B.C. 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 of the Act.

Those attending the hearing are listed on the cover page of this decision and on the Interim Decision dated June 30, 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 under section 49.2 of the Act 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

There are no fixed-term tenancies impacted as all before me are periodic, which means month-to-month tenancies. The landlord has applied for an order of possession pursuant to section 49.2 of the Act.

Landlord's submission and evidence

The building was built in 1996 and is made up of 18 units over 3 floors plus underground parking. The landlord confirmed that of the 18 units, only 7 are occupied with 11 being vacant.

The landlord has the permits for significant renovations to the building including the following permits:

1. Building
2. Fire
3. Plumbing
4. Electrical

The landlord referred to a structural engineering report and building drawings submitted in evidence in support of the above. The summary of findings from the structural engineering report (Report) states in part as follows:

Summary of Findings

Lateral Loads:

Given the current wall assemblies which have no internal plywood/wood based shearwalls (exterior walls sheathed only) and instead rely on the gypsum wall board, the seismic loads need to be calculated considering the reduced overstrength and ductility reduction factors (R_d , R_o) suitable for gypsum and wood in combination. This yields a higher overall base shear as well as individual storey shears than for wood-based walls alone and therefore it was found that the seismic loads govern over wind at all levels. Based upon these criteria the building at present does not meet BCBC 2018 loading using CSA O86 Engineering Design in Wood. O86 stipulates a maximum percentage of shear resisted by gypsum wall board for seismic design. For a 3-storey building, a maximum of 80% of the shear load is permitted to be resisted by gypsum wall board at L3, 60% at L2 and 40% at L1, which are all satisfied in this case. However, the lateral capacity of each storey except for L3 is exceeded by the seismic load which indicates that upgrading is necessary to meet the code.

Additionally, since the exterior walls are likely unblocked, are not constructed with hold down anchorage at each end and have insufficient dead load acting to prevent uplift it would be inappropriate to rely on them as shearwalls. Similarly, the corridor walls should be considered in the same way, essentially leaving the building with no true lateral system since there is no complete load path to the foundations.

The diaphragm capacity at the first-floor level will require further review to ensure sufficient capacity to transfer the loads from the exterior walls and their supporting beams to the inset CMU walls close to the centre corridor. Additional blocking may be required to locally strengthen/stiffen the diaphragm in discrete locations.

The recommendation from the Report states the following:

Recommendations

Considering that the level 3 to roof walls have sufficient capacity to resist the lateral loads, it can be argued that no upgrading work is required. Nevertheless, adding plywood and hold down anchors to the corridor walls would be prudent to ensure effective load transfer in the absence of significant dead load acting on these walls. The party walls

are each longer, with a longer overall combined length which means that the load resisted by each wall is less and there may not be uplift at the ends due to the dead load from the tributary floor area supported by each wall.

The floors below require will plywood panels to be added along portions of the corridors and to each party wall to meet the load requirements. Additionally, the corridor walls will need hold down straps to transfer loads to the levels below, whereas analysis may determine that these are not required for the party walls.

It is also recommended that the connections of the glulam beams to the piers/walls be reviewed to ensure sufficient capacity to transfer any tension and shear loading into the foundation system however this will require removal of some exterior finishes to review some of the connections as well as the nature of the first-floor diaphragm.

In addition, the landlord has provided a document from the fire protection company contracted to perform the following work:

We have included for:

- Municipal sprinkler permit.
- Contract to start after a 6" flanged outlet (by others) inside the water entry room.
- Fire department connection located as per the tender drawings.
- Sprinkler piping: Blazemaster when allowed by building code (residential areas) and schedule 10 steel, as per specifications.
- Complete standpipe system as per NFPA.
- Tail-end Dry pipe system for the Attic sprinklers.
- White semi-recessed pendent and sidewall sprinklers installed throughout all dwelling units.
- Dry sidewall sprinklers for balconies (bulkheads will be required).
- Brass upright heads with exposed piping for the areas with open ceilings.
- Fire extinguishers & cabinets as per code.
- PST on all materials.

The project manager (PM) wrote the following in terms of their assessment of the scope of the renovation work as follows:

Re: Scope of Renovation Work

After site visit and review of various drawings and upgrade repairs provided to us it is our opinion that a renovation of this scale would take approximately 12 – 15 months to complete.

As previously discussed, the building will also need to be vacated of all tenants during the course of construction due to health safety reasons. Below is a brief list:

1. The Structural and seismic upgrades require the removal of all corridor gypsum wall board from the walls and ceilings, doing so will compromise the fire rating of the corridor.
2. The Structural and seismic upgrades require the removal of gypsum wall board from unit to unit party walls, doing so will compromise the fire rating between units.
3. The Fire suppression upgrades require gypsum ceiling removal throughout along with many walls, doing so will compromise the fire rating from unit to unit up and down and side to side.
4. The Architectural layout changes require building water and sanitary lines to be removed and replaced/relocated leaving the units without potable water and functioning washrooms.
5. The new unit layouts also require removal and replacement of framed walls, flooring, kitchen cabinets and countertops, and interior doors creating a major inconvenience, potential obstruction of egress paths and trip hazards.
6. The Electrical scope will require corridor lighting removal, including fire alarm and emergency lighting as well as individual unit lighting, switches and outlet disconnections including heaters and hot water tanks.

The building permits submitted indicate the description of work as “life safety upgrades – seismic and life safety upgrades”. The electrical permit, fire alarm/sprinkler permit and plumbing permit were also provided in evidence.

The drawings provided in evidence were from an architect and counsel submits that the landlord has all of the required permits in place to perform the planned work and has encountered considerable expense.

A witness for the landlord, PM S.H. was called to testify and affirmed the following:

- They operate a construction management company, and that the landlord hired them to review architectural drawings to provide an opinion on the timelines and feasibility of an occupied versus unoccupied building during the renovations,
- They have 20 years of experience and have managed hundreds of multi-faceted family residential projects,
- They toured the building and have based their opinion on the tour of vacant units, the Report and the drawings,

- They confirmed the requirement and existence of building, fire, plumbing and electrical permits and that all the permits have been obtained,
- They wrote the letter to the landlord providing a summary and opinion that the building must be absolutely vacant and that project will take 12-15 months.
- If tenants say they can work around the project, there is no way as it would be impossible as the fire suppression work could not start until all the other work is completed so 12-15 months is best case scenario,
- The benefit of the renovations are to bring the building up to the current Building Code because once you start a renovation the work has to be done to the current Building Code,
- The work involves safety and seismic improvements,
- The building is a wood structure which makes the fire suppression systems much needed.

Cross-examination by tenants

- In terms of the work necessary, they base their decision on the Report by the engineer.

Counsel reiterated that the landlord has provided the architectural drawings, all permits including those for fire, structural, plumbing/HVAC and electrical and that all permits were obtained before the application was made. Counsel also submits that the landlord is acting in good faith and provided a witness and the landlord testimony to confirm same.

Counsel also reviewed all 4 elements of section 49.2(1) of the Act and how the landlord has met each.

Tenants' submissions and evidence

The landlord confirmed for the tenants that the property was purchased 3 years prior and that the landlord is a corporate company.

Tenant P.K. asked if the repairs were really necessary and stated that the landlord was not asked by the city to renovate the building and that other buildings are in worse condition than the building they reside in. Tenant P.K. also stated that they would not be bothered by cosmetic upgrades and that they want an option to stay and that they do not believe the work is necessary and that proper maintenance has not been done. P.K. also mentioned a "show suite" being occupied by someone known to the landlord.

Counsel's response was that the work is not just about safety it is also about extending the prolonged use of the building and that safety is just one component. In terms of the "show suite" the landlord's brother was living in an AirBNB and is temporarily living in the "show suite" and knows that they will have to vacate too so that the work can be completed in the "show suite" also. Counsel also stated that there have been no written complaints about poor maintenance and that the city or government does not have to initiate the renovation, the landlord is entitled to initiate the renovation work under the Act.

Tenant R.K. claim that some tenants did not leave willingly but failed to provide any statements or call those other tenants as witnesses. R.K. also stated that maintenance has not been good as a light has been flashing for over a month and there is a large hole, the latter of which R.K. stated they have not informed anyone of. R.K. alleged that the plan is a ploy to force people out so they can charge more rent. R.K. claims the tenants previously maintained the gardens and did the lawn mowing and snow blowing but that the lawnmower and snowblower are gone.

Counsel responded by stating comments about previous maintenance are not relevant as all tenants are encouraged to put complaints in writing so the landlord can respond to them in a timely manner but that the hearing is about the need for renovations not specific complaints about maintenance that the landlord has not received in writing from the tenants.

Tenant B.R. stated that their whole working life has been in construction and that there is nothing wrong with the building other than some holes in the parking lot caused by one of the contractors inspecting the building for the landlord. Tenant B.R. stated that they have run 100 person crews and that they have never seen anything like this before.

Counsel's response was that the Report was completed by a professional engineer and specify all the Building Code deficiencies which the landlord wants to rectify and has the authority to do, including the fire suppression system which is currently not to Code. Counsel also stated that all tenants had the opportunity to provide reports from their own professionals and none of the tenants did so. Tenant Y.B. stated that they feel like this process is a renoviction and agrees with tenant B.R. that nothing is wrong with the building.

Tenant T.H. had nothing to add when provided the opportunity.

Counsel stated that they have provided the legal framework for the application and all of the permits and evidence that the significant renovation work is required and that they are entitled to a 4 Month Notice to end the tenancies as a result of the work required.

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;
- (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.

[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 have based on decision on the professional engineer Report and that all of the required permits have been issued before the application was made.

I afford little weight to the submissions of the tenants as none of the tenants made the decision to hire an expert to write a report for my consideration. I also find that the evidence from the tenants was anecdotal at best and was not based on an analysis of building codes, permits or architectural drawings.

As such, I find that the renovations are significant and that the building must be vacant for the renovations to be completed in the 12-15 month timeline proposed.

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

[emphasis added]

Given the above, I grant the landlord an order of possession effective **January 31, 2024 at 1:00 PM**. This date is a full 4 months past the date of this decision, September 20, 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 that require vacant possession.

The landlord has been granted an order of possession effective January 31, 2024 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: September 20, 2023

Residential Tenancy Branch