



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

The Landlord made their Application on June 16, 2023 for an order of possession for a single rental unit, so they could perform renovations or repairs that require the rental unit to be vacant, under s. 49(2) of the *Residential Tenancy Act* (the “Act”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on August 11, 2023. In the conference call hearing I explained the process and provided the parties that attended the opportunity to ask questions, present oral testimony, and make submissions during the hearing.

Preliminary Matter – parties’ service of evidence

At the start of the hearing, the Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, in addition to the Landlord’s evidence. The Tenant pointed to the 14-day submission guideline as set out in the *Residential Tenancy Branch Rules of Procedure*.

I find there is no prejudice to the Tenant receiving the material on August 2, 2023; the Tenant themselves left their submission in this matter until July 31, after the Notice of Dispute Resolution Proceeding, along with the Landlord’s evidence to them served in a timely manner. I am not excluding any evidence from the Landlord arbitrarily based on a timeline only without considering the Tenant’s own pattern of preparing and submitting evidence in this matter.

The Landlord stated they received evidence from the Tenant that was served to them in person on July 31.

Issue to be Decided:

- Is the Landlord entitled to an Order of Possession to perform renovations or repairs, pursuant to s. 49.2 of the *Act*?

Background and Evidence

In the hearing, the Landlord described the tenancy agreement they had in place with his Tenant in this individual rental unit since 2006. The Tenant currently pays \$506.92 per month for rent. This rental unit is one of the eight units that exist in a row at the rental unit property.

On the Landlord's Application, they listed the issue as follows:

Open up walls to expose studs in order to upgrade all plumbing in Bathroom and Kitchen, insulate proper fire safe and sound barrier. Remove rotten beams and joists, replacing with new 2x6 joist and supporting beams the length of the unit. Remove kitchen cabinets to open up walls and ceiling to add ventilation and new circuitry for exhaust fans. Replace kitchen cabinets and flooring to entire unit. Replace shower and bathroom appliances. Upgrade sewer pipe and hot water tank. Est. 4 months reno.

The Landlord provided a summary statement – entitled “Renoviction unit #7 --, dated June 23, 2023:

[The rental unit] has not had any renovations or major repairs since built in 1972. [The rental unit] is small, 280 sq feet. Removal, repair and reconstruction of unit, can not be safely achieved in such a small confined space, with tenant occupying unit.

Permit not required for plumbing modifications, as per [plumbing contractor] (letter provided). Removal of bathroom and kitchen walls down to studs, required for plumbing modifications.

In the hearing they pointed to individual items of pictures in their evidence that illustrate the following in the rental unit:

- rotten wood
- substandard plumbing
- materials used
- upgrading to code

- original floors in the rental unit from 1972
- support beams – only have been reinforced, not ever replaced

The Landlord cited their own right to protect their property that is their asset. They had to modify the pattern of work because of their regular livelihood, as well as an injury, in order to complete the work involved with this rental unit. These factors substantially add to the Landlord's timeline to complete this work in their estimation.

They based the need for the rental unit to be vacant stemming from the work they completed in two other units at the rental unit property. They estimate that it's hard for a tenant to stay in the unit during the renovations because of the lack of kitchen. The rental unit here is the only rental unit that remains that has not had upgrades or renovations over the years. They estimate the work in this 277-square-foot unit to take at least 4 months, work that requires the use of respirators, really making it unsafe for the Tenant to be present.

The Landlord also provided that they were willing to have the Tenant move into a different available rental unit, available on September 1, 2023. In the hearing, the Landlord stated they would consider a reasonable amount for rent within this rental unit.

The Tenant provided a comprehensive written statement in which they raised the following points:

- it is "reasonable and standard practice to complete these types of repairs while tenants remain living in the unit"
- structural/aesthetic improvement is "not the sole, primary motivation for seeking the order as other indications point to the objective being the cessation of [this] tenancy to begin a new tenancy agreement with a new occupant, problematizing the good-faith requirement"
- the Tenant has been living in this rental unit for over 16 years, paying \$507 per month
- other renovated units in the building are being rented for \$850 per month, similar units in the regional area go for \$950 - \$1,600 per month

- the Landlord's intended repairs are not "major projects nor necessary to preserve the life-span of the property or health & safety of the tenant", being only aesthetic in nature
 - specifically, the Landlord's listed repairs fall into a category of "minimal disruption" and "unlikely to require vacancy"
 - construction should be done in a way that does not seek to end the tenancy first
- intended repairs do not require vacancy over 45 days
 - if such repairs that require vacancy can be completed in less than 45 days, the Tenant can make the required living arrangements, then the tenancy should not end
 - the Tenant is willing to relocate in order to accommodate renovations
 - repair/replace the floor beams requires work on one section at a time
 - replacing rotten subflooring and/or floor joists similarly would not require vacancy, with work being only 1 or 2 days in length
- the Landlord has an ulterior motive for ending the tenancy:
 - there is a "demonstrated history" of the Landlord evicting tenants, then renovating to re-rent the unit at a much higher price – the Tenant listed 2 other units in which this was the case
 - another resident's statement has the Landlord stating all residents would be evicted
 - the Landlord imposes other standards, as "proactively building an eviction case against the tenant for minor grievances"
 - the Tenant has not complained about interior fixtures, yet the Landlord is replacing these, thereby showing their intent to re-rent the unit to a new tenant

- the Tenant provided statements from other former and current rental unit property residents who set out their interactions with the Landlord on miscellaneous points in the past

In the hearing, the Tenant summed up their points thus:

- the Landlord's evidence does not prove that the scope of the work does not require a permit; this is a strict requirement where a landlord seeks to end a tenancy in this manner – the Tenant submits the Landlord did not rely on a municipal or provincial authority, or a qualified engineer to present that no permit is needed
- regarding the requirement for a vacant rental unit, the Tenant generally listed specifics of the work involved and questioned the scope. A tradesperson who attended as a witness for the Tenant questioned specifically the Landlord's method, citing it as unnecessary to remove the existing flooring – basically, there are other ways to complete the work involved
- the Landlord's good faith in seeking to end this tenancy: the Landlord's motivation is to repair the rental unit and then increase the amount of rent – the Tenant cited other rental units at the property as paying increased rent – the Landlord in response stated that the Tenant's account of the reasons other tenancies ended previously was factually inaccurate

In a separate written response, the Landlord pointed to specific work involving rotten wood within the rental unit that would make the environment hazardous: "The demolition is very dusty, from contaminated wood and mold spores, requiring a respirator to do the work." The Landlord also described the Tenant's own reaction to work previously completed in other units, with a high level of noise present that would disturb the Tenant should the Tenant remain living in the rental unit.

In a further response, the Landlord listed the amount of work they completed in total at the rental unit property. This stands as a testament to the Landlord's due diligence to protect their assets; this includes each rental unit. In a summary statement, the Landlord provided:

When renovating the units, it is evident that the units need to be gutted and rebuilt. The last two units I renovated took over 3 months each to renovate. [The rental unit] will take longer, as it will have to be totally gutted. It is the oldest unit in the building and has not seen any upgrades in over 50 years.

The Landlord also corrected the Tenant's submission that other units were occupied during renovations. The Landlord provided other evidence showing reasons these other rental units' tenancies ended.

Analysis

The *Act* s. 49.2(1) provides that a landlord may make an application for dispute resolution requesting an order to end a tenancy, and an order granting a landlord possession of a 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.

The *Act* provides that the Director must grant an order ending the tenancy in respect of, and an order of possession of, a rental unit if the Director is satisfied that all the circumstances in the above subsection (1) apply.

The *Residential Tenancy Policy Guidelines*, in particular *2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use* provides the following information:

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs "objectively" are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant's willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

Based on the testimony and evidence provided by the Landlord, who bears the burden of proof on the issue of required vacant possession, I find as follows:

- I find the work is necessary to prolong/sustain the use of the rental unit in relation to the building in which the rental unit is located.
- I am satisfied that the work involved is of such a nature that it requires actual vacancy – *i.e.*, the Tenant cannot reside in the rental unit – as the work is taking place. I find that the Tenant residing in the rental unit during work would impede a faster completion than if the Tenant remained. As well, there are important safety concerns that the Landlord rightfully pointed to as causing hazard.
- I find the Tenant cannot stay in the rental unit while the work is being completed – the work would bring more than discomfort or temporary loss of some parts of the rental unit.
- The work is certainly more than cosmetic in nature, or even rudimentary maintenance. The work involved – despite the debate raised by the Tenant throughout their submissions – requires hazardous work that makes the rental unit unlivable.
- I find the Landlord is not seeking to end the tenancy merely as a matter of convenience to them in order to undertake the work as and when they please. The Landlord brings legitimate concerns about health risks to the Tenant.

Most importantly, I find the Landlord did not establish that the only reasonable way to achieve the vacancy that is necessary to complete the work is to end the tenancy agreement. I find the Landlord forthright in presenting the option for the Tenant to reside in another unit at the rental unit property. I find this gesture, in and of itself, outweighs the evidence that the Tenant presented about the Landlord's perceived bad faith in seeking to end the tenancy, and for alleged past transgressions for which the Tenant relied on other residents both past and present.

I find the tenancy agreement between the Landlord and the Tenant shall not end for the reason of completing renovations to the rental unit. The tenancy agreement is transferable to a different living arrangement, and nothing should prevent the parties from reaching a compromise on the use of another rental unit in order to avoid ending this tenancy. The Landlord presented this option in the hearing; the Tenant in their

written submission similarly stated that that they were willing to relocate to accommodate the necessary renovations.

In summary, I find that the tenancy does not need to end for the reason of renovation to the rental unit. I dismiss the Landlord's Application, without leave to reapply.

Conclusion

I dismiss the Landlord's application, without leave to reapply. The Tenant should be able to relocate elsewhere during completion of the intensive work period, without an end to the existing tenancy agreement.

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

Dated: September 11, 2023

Residential Tenancy Branch