



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit to perform renovations or repairs that require vacant possession.

The landlord and the tenant were present at the hearing. The hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

The tenant confirmed receiving the landlord's application. The landlord filed evidence and the tenant did not.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy due to renovations or repairs and be issued an order of possession of the rental unit?

Background and Evidence

This tenancy began on April 11, 2017 for a monthly rent of \$750, according to the landlord. The current monthly rent is \$750.

In their application, the landlord wrote the following:

We are gutting the entire unit. We are removing all plumbing fixtures, replacing the kitchen, replacing the bathroom, changing flooring, painting, etc. I will doing much of the labour myself to save money. This job will take me over 3 months to complete.

In support of their application, the landlord testified and provided evidence as follows:

They called the City to pull permits to provide for evidence and was advised by the permit department they do not need permits to swap out plumbing fixtures, cabinets, carpets, paint, etc. They were told that permits were required for structural changes and the proposed work is cosmetic.

The landlord submitted that the strata by-laws also do not required permits for the planned work.

The tenant was offered the chance to testify, but chose not to.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49.2 (1) of the Act provides that 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.*

The Act states that the director must grant an order ending the tenancy and grant the landlord an order of possession if the director is satisfied that **all** the circumstances in subsection (1) apply.

Tenancy Policy Guideline 2B (B) provides the following information:

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.

Guideline 2B provides further information as follows:

*If permits are not required for the change in use or for the renovations or repairs, **a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required** or a report from a qualified engineer or certified tradesperson confirming permits are not required.*

I find the landlord failed to satisfy the first requirement under section 49.2 (1) as they did not have the necessary and required permits, or proof from the municipal or provincial authority stating permits were not required for the planned work.

Apart from that, the landlord indicated that the proposed work was cosmetic, and for this reason, I find insufficient evidence the rental unit was required to be vacant. Therefore, it was not necessary to consider any further requirements under the Act.

Based on the above, I find the landlord has not met their burden of proof under the Act due to insufficient evidence that the building permits or approvals were in place or proof

that no such permits or approvals were required for this work, or that the proposed cosmetic work required the rental unit to be vacant.

For this reason, I find it was not necessary to consider the landlord's good faith intention to renovate or repair the rental unit.

I dismiss the landlord's application, without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply due to the insufficient evidence cited above.

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: November 11, 2023

Residential Tenancy Branch