



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 landlords 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. All parties were affirmed.

The tenant confirmed receiving the landlord's application. The parties confirmed receiving each other's evidence.

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 Residential Tenancy Branch (RTB) Rules of Procedure (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 July 1, 2015, for a monthly rent of \$1350, according to the landlord. The current monthly rent is \$1730.

In their application, the landlord wrote the following:

Purpose: To completely remove the blockage in the sewer pipe. The plumber said: excavate and replace pipe. It needs to be vacated because the digging for the old sewage pipe is: 1. Near water supply line so has to be very careful. 2. Getting deeper and near big trees with many strong roots. Very difficult and time consuming. 3. Under the concrete too. Excavated 15' long pipe fully blocked with grease and cloth. Very brittle old pipe from using Draino, long old pipe can collapse anytime.

In support of their application, the landlord testified about various claimed issues with the tenancy:

The costs of the mortgage, property taxes, and insurance have increased such that they are losing money. The sewer pipe is brittle and could burst at anytime, making the repair an emergency under the Act. They have hired plumbers to clean out the pipe, and at this time, they discovered the pipes were brittle. The landlord submitted that the plumber's invoice shows that they did not require permits because the work has to be done. They do not need permits because the pipes are located on the landlord's property.

The landlords confirmed that they do not have permits or approvals or written confirmation from a municipal or provincial authority that none are required.

The tenant said that the plumbing is working fine, the landlord did some work on the pipes and that they did not understand why the landlord said that they caused damage to the pipes. The tenant said they have been good landlords.

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. The plumber stating what work would be done does not constitute a report. No timeframe for the scope of work was given by the plumber.

Apart from that, I find the landlords' evidence also shows the Notice was not issued in good faith. The landlord began immediately testifying about their increased costs instead of the proposed work on the pipes, which I find amounts to ulterior motives.

I also find the landlord submitted insufficient evidence that the rental unit was required to be vacant or how long any proposed work would take.

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, that they issued the Notice in good faith, or that the proposed work required the rental unit to be vacant.

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

The tenancy continues until it otherwise ends under the Act.

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: December 15, 2023

Residential Tenancy Branch