



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding KIMBERLEY LODGING COMPANY and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **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.

Only the parties on the covering page of this decision appeared. The tenant confirmed that they received the landlord evidence, which is 2 documents. The landlord confirmed they received the tenant's one page document.

### **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**

The tenancy began on December 1, 2020. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit was not required to be paid.

The landlord provided in their evidence the planned work for the rental unit is as follows:

The present bathrooms and kitchen will be completely dismantled. Cupboards, counters, appliances and fixtures will be removed from the kitchen. The vanity, toilet and bath and fixtures will be removed from the bathrooms. A substantial amount of drywall will be removed to update any plumbing. We will also be removing all doors, trim baseboard heating and lighting fixtures. We will be installing all new products, including doors, trim, and flooring throughout. The kitchen will be completely rebuilt with new cupboards, counters and new appliances. Bathrooms will be refit with new baths, toilets and vanities.

The landlord's agent testified the landlord owns one unit in the building that consists of 12 units. The agent stated that the building was built in 2000 and the strata is starting to update the property.

The landlord's agent testified that the landlord is going to "gut" the entire rental unit and make the above improvements and update the plumbing and electrical. The agent stated that the landlord does not need permits for the improvement, and any permits that may be needed for electrical or plumbing will be obtained by their contractor.

The tenant testified that their rental unit is in good condition. The tenant stated that they can accommodate the landlord for any of the renovations.

The tenant asked the landlord's agent if the landlord would allow the tenant to move back into the rental unit after the renovations were done. The agent stated that the landlord is planning to do short term rentals after the renovation is completed.

### 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.*

Guideline 2D provides further information as follows:

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

I find the landlord failed to provide sufficient evidence 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. Nor was a report from a qualified engineer provided or confirmation from a certified trades person confirming permits are not required.

While the landlord provided a printout from the municipality website showing when permits are needed; that does not support that that the municipality has reviewed the

planned work and determined no permits are needed and is inconsistent, as plumbing and electrical permits would be needed. Even if the landlord's contractor is responsible for obtaining those permits they must be obtained prior to making this application.

Further, I have no proof that the Strata Corporation has given approval for the renovation to take place or that approval is not required.

Furthermore, I have no evidence from a qualified person that leads me to believe that the rental unit must be vacant or the timeframe they could complete the work or that this is the only way for these primarily cosmetic upgrades to be made that require vacant possession. As an example the rental unit can be upgraded in phases, such as one bathroom at a time. The tenant has stated they would do whatever is necessary to accommodate the landlord including vacating for short periods of time.

Based on the above, I find the landlord has failed to provide sufficient evidence to end the tenancy. Therefore, I dismiss the landlord's application.

### Conclusion

The landlord's application is dismissed.

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: January 12, 2024

---

Residential Tenancy Branch