



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.

Those listed on the cover page of this decision attended the hearing and were affirmed.

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

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

The parties were provided the opportunity to provide testimony and make submissions.

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.

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 agent said when the landlord purchased the property in 2019, the tenants were already living there, and they do not know when either of the two tenancies in this dispute began.

In their application regarding Unit 1, the landlord wrote the following to describe the renovations or repairs and why vacant possession is required:

New drywall throughout the whole unit. The floors need levelled and new flooring. Bathrooms need altered and kitchens need complete updates.

In their application regarding Unit 2, the landlord wrote the following to describe the renovations or repairs and why vacant possession is required:

Unit has been smoked in. New drywall is needed. flooring needs done, bathroom and kitchen needs complete updates.

The agent said both of the side-by-side units need gutting, the floors are sinking, and they will not know what the cause is until the units are empty and investigated. For this reason, they do not have permits until they know what is causing the sinking floors.

The tenant submitted a letter from their original landlord, who wrote that prior to the tenant moving in on June 1, 2012, the roof was replaced, the windows were removed, stucco and insulation were added. In addition, according to the letter, floor joists, “sheating”, and flooring were replaced in the living area and bedroom.

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. Further, I find the landlord submitted insufficient evidence that the rental unit was required to be vacant, the scope of work, 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, 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: January 16, 2024

Residential Tenancy Branch