

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") dated July 10, 2023, seeking vacant possession of the rental unit to perform renovations or repairs.

Issue to be Decided

Is the Landlord entitled to an order of possession to perform renovations or repairs, pursuant to section 49.2 of the Act?

Preliminary Issues

- Updated Name of Tenant QE

Amended the application to include the legal name of Tenant QE.

- Added (Basement) to Rental Unit Address

Amended the application to include (Basement) in the rental unit address.

Background and Evidence

The tenancy agreement began April 1, 2024 with a monthly rent of \$1,027.20, due on the first of each month. The current rent is \$1,027.20 pursuant to a rent increase effective January 1, 2024.

In August 2023 and September 2023, the Tenants experienced issues with water backing up in the bathroom tub. Both times a plumber was sent to assess the situation. The Landlord's agent OL (the Landlord's Agent) argued the plumber determined there are holes in the main plumbing line which resulted from tree roots. The Landlord's Agent argued if the main plumbing line was not replaced another backup could occur and cause significant damage to the rental unit.

The Tenants argued they were present when the plumber attended the rental unit both times and neither time did the plumber mention there were any holes or issues with the main line. The Tenants also advised they have had no issues with the pipes since the last incident in September 2023.

The Landlord's Agent argued the extent of the renovations is replacing the main sanitary pipe, replacing pipes in the kitchen, and adding additional insulation. The Landlord's position is that the rental unit was built in 1961, if the pipes were to backup again it could cause significant damage and there is insufficient insulation which has caused the pipes to freeze. I will note that at the end of the hearing the Landlord's Agent expanded the scope of the work to include potential additional renovations that were not mentioned at the start of the hearing. The Landlord's Agent argued the work will take a minimum of 2 weeks and water and access to the kitchen and bathroom will be interrupted during the renovations. The Landlord's Agent argued the rental unit needs to be vacant during the renovations and that their plumber advised them of this. A permit was submitted into evidenced and was obtained for the plumbing work. The Landlord's Agent advised no permit is needed for the other work being completed.

The Tenants' position is that the Landlord has no intention of doing these renovations and is just doing this as retaliation because the Tenants sent letters to the Landlord requesting repairs and that the Landlord comply with the Act. The Tenants' position is that the renovations or repairs do not require the rental unit be vacant. The Tenants submitted two letters from accredited plumbers which supported that the water to the rental unit would likely only be interrupted for 2 days, only during working hours and services could be restored after the workers left for the day.

The Tenants advised that they have never had any issues with kitchen pipes in the rental unit freezing and that it is the upstairs rental unit that has had issues with freezing pipes. The Tenants also argued the Landlord's Agent has only ever mentioned the repairs to the main pipe and these additional renovations and repairs have never been brought up to the Tenants.

The Tenants are willing to accommodate any renovations and find alternative accommodations if it is required that the rental unit be vacant.

Analysis

The Act section 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 circumstances 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.

(a) Permits

The Landlord has submitted a copy of the permit obtained for the plumbing work. I accept the Landlord's testimony that permits are not required for the additional renovations or repairs.

According to *Residential Tenancy Branch Policy Guideline 2B (Policy 2B)*, permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit, and required permits must have been valid at the time the application to end the tenancy was made.

I find the Landlord has the permit requirement because they have provided a copy of the permit.

(b) Vacancy required

According to Policy Guideline 2B,

In *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, the BC Supreme Court found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the "nature and extent" of the renovations or repairs require the rental unit to be vacant.

Renovations or repairs that require the rental unit to be vacant could include those that will:

- make it unsafe for the tenants to live in the unit (e.g., the work requires extensive asbestos remediation); or

- result in the prolonged loss of a service or facility that is essential to the unit being habitable (e.g., the electrical service to the rental unit must be severed for several weeks).

Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant. ...

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.

The Landlord has not provided evidence that the nature of the renovations requires the unit to be vacant. I am not satisfied that the Tenants must vacate the rental unit to allow for the replacement of the main sanitary pipe, plumbing in the kitchen and adding additional insulation. The Tenants provided letters from accredited plumbers who advised any disruption to the Tenants would be minimal. The Landlord did not provide any evidence or reports from a plumber to support that the rental unit required vacant possession. Additionally, the Landlord's Agent was not able to confirm if the additional renovations and repairs would happen beyond what is stated above.

Therefore, I find the Landlord has not established a requirement for vacant possession.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord would address the main sanitary line. However, the Landlord has not provided evidence that replacing the pipes in the kitchen and adding additional insulation is needed to sustain the life of the rental unit. No evidence was provided to show that there is any issue with the pipes in the kitchen of the rental unit or that there is asbestos or an insufficient amount of insulation in the rental unit.

I find the Landlord has not established the necessity of all the renovations to prolong the life of the rental unit.

(d) Whether tenancy must end

If the renovations or repairs that require vacancy can be completed within 45 days or less and the Tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the Landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.

I find the Tenants are willing to accommodate repairs and renovations in the interest of continuing their tenancy.

In summary, I do not find it necessary to end the tenancy agreement because the Landlord has not sufficiently established the requirements under section 49.2 of the Act.

Conclusion

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

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

Dated: January 19, 2024

Residential Tenancy Branch