



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order for vacant possession for repairs/renovations to the rental unit under section 49.2 of the Act

Landlord GC attended and Tenants CB1 and CB2 appeared.

Issue(s) to be Decided

Is the Landlord entitled to an order of vacant possession for the rental unit?

Background and Evidence

The Tenants' acknowledged service of the Landlord's dispute notice and evidence. The Landlord acknowledged service of the Tenants' evidence.

The rental property is on one side of a duplex and has separate upper and lower suites occupied by two separate Tenants. CB1 occupies the upper unit. She commenced tenancy on May 1, 2011. Her rent is \$875.00 per month, and she paid a security deposit of \$400.00. CB2 occupies the lower unit. His tenancy commenced September 6, 2006. His rent is \$459.00 per month and he paid a security deposit of \$200.00. Both Tenants still occupy their rental units.

The Landlord testified that he requires vacant possession of both units to replace the water pipes. He stated this will require significant renovations and will make the units

unliveable during the renovations. He testified that the water pipe replacement is a necessary requirement of his insurance company and they will not provide home insurance without pipe replacement. The Landlord's mortgage conditions further require him to maintain home insurance as a condition of the mortgage. The Landlord provided both the insurance and mortgage documents in evidence.

The Landlord also provided a timeline for the work in evidence. He stated that he prepared both the timeline and the type of work required to be done at each stage in that document. The Landlord plans on doing the renovations himself and the timeline shows that the work will take approximately 11 weeks as he plans on doing the renovations himself on a part time basis around his employment schedule. He testified that he replaced the water pipes in the duplex next door which he occupies and stated that it took him approximately that amount of time to complete the work. He has been advised that permits are not required for this type of renovation.

The Tenants testified that they did not believe that the water pipes needed replacing. Tenant CB2 said that he has been told that other insurance companies will provide insurance without the replacement of the pipes and the Landlord should investigate other insurance companies. The Tenant testified that he did not believe that the renovations are as extensive as the Landlord describes and the Landlord has an obligation to complete the renovations within a reasonable amount of time.

Tenant CB1 stated that there is no water damage in her unit and doesn't understand why the tenancy must end.

All parties agree that the Landlord has indicated he is willing to sign new Tenancy Agreements with the Tenants once the work is complete. All parties agree that the Landlord at that time will offer the units to them at current market rent.

Analysis

Section 49.2 sets out the requirements that must be satisfied by the Landlord to then entitle him to an order of vacant possession. I will only consider the requirements necessary for my decision.

The Landlord must establish that the renovations or repairs require the rental unit to be vacant, are necessary to prolong the use of the building, and the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

RTB Policy Guideline 2B addresses the requirements to receive vacant possession for the purpose of repairs or renovations under section 49.2 of the Act and states as follows:

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”. Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

...

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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time.

The evidence of the Landlord was provided through his work timeline and gives an outline of the work needed and when it is to be done. It is not supported by other evidence such as evidence from qualified professionals supporting his statements. It is not supported by evidence that there is no alternate way to complete the work. The Landlord did not establish his qualifications to detail the work required to be completed other than he did the work himself on his side of the duplex. I find that the work timeline prepared by the Landlord does not establish the need for vacant possession.

I further find that the lengthy timeline to complete the work is due to the Landlord’s desire to complete the work himself around his employment schedule as opposed to the time it would take to complete the work if working full time on the renovations. Cost effectiveness or savings is not a consideration under section 49.2 of the Act.

The reason given by the Landlord to complete the work is that it is required for his insurance. He did not provide evidence that the renovations were necessary to prolong the use of the building which is a requirement under section 49.2 of the Act.

Finally, I note that RTB Policy Guideline 2B specifically addresses removal of water pipes as being an example of a renovation or repair that does not require vacant possession.

As the Landlord has not satisfied all of the requirements of section 49.2 of the Act, I find that he is not entitled to vacant possession of the rental unit.

Conclusion

The Landlord's application is dismissed 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 *Residential Tenancy Act*.

Dated: February 07, 2024

Residential Tenancy Branch