Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord completed this Application on November 5, 2023 for an order of possession so they could perform renovations/repairs that require the rental unit to be vacant, under s. 49.2(1) of the *Residential Tenancy Act* (the "*Act*").

The matter proceeded by way of a hearing pursuant to s., 74(2) of the *Act* on February 5, 2024. In the conference call hearing I explained the process and provided the parties that attended the opportunity to ask questions, present oral testimony and make submissions during the hearing. At the start of the hearing, the Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, in addition to the Landlord's evidence. The Tenant did not provide documents or other material as evidence for this hearing.

Service of Notice of Dispute Resolution Proceeding and evidence

In the hearing, the Tenant confirmed they received evidence served to them from the Landlord. On this basis, I find the Landlord served evidence as required.

The Landlord confirmed receipt of evidence from the Tenant, although questioned the timeline with reference to a respondent's seven-day rule prior to the hearing, receiving the documents on February 3. The Landlord stated they could not respond to the Tenant's evidence in a timely manner prior to the hearing.

I find the Tenant mailed the material to the Landlord on January 29; therefore, I find it was deemed served to the Landlord on February 3rd as per s. 90(a) of the *Act*. This is outside of the seven-day timeline set in the *Residential Tenancy Branch Rules of Procedure*; therefore, I omit these materials from consideration. The provision of evidence in this very short timeline, with the Landlord's Application in place since November, prejudiced the Landlord in this proceeding.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession to perform renovations or repairs, pursuant to s. 49.2 of the *Act*?

Background and Evidence

In the hearing, the Landlord presented that they bought this rental unit in 2014. They had an issue of a flood in summer 2023, when the Tenant notified the Landlord about this on July 3. According to the Landlord, the Tenant moved out for a couple of days because of a leaking ceiling. The Landlord was not able to secure the services of a contractor in the summer in that municipal area.

A plumber later examined the issue and concluded there was a leak from the roof. The Landlord's insurer denied coverage because the roof apparently was not built to the correct standard. The insurer's contractor undertook a repair; however, as described by the Landlord in the hearing, that contractor missed one step, thereby causing residual issues.

A contractor stated the full scope of work was "multiple trade" and involved a timeline of 3 or 4 months. The Landlord applied to the local municipality and that responsible office replied to inform the Landlord that no permit was required, though they would send people to inspect the work that involved the walls and ceiling in the rental unit.

The Landlord also described other work involving the sewage line which requires excavation and having the water disconnected. The Landlord could not accurately describe the full scope of the work involved because they had not opened anything up yet.

The Tenant pointed to the work, as described by the Landlord, as a pretext for getting the Tenant out from the rental unit, thereby enabling the Landlord to increase the rent. The Landlord, in the Tenant's estimation, has no actual plan, or capability, to renovate in the rental unit. The holes in the ceiling only involve drywall, and from the Tenant's perspective this is the only defined piece of work that the Landlord is intending to address in the rental unit.
In sum, the Tenant pointed to the smaller degree of actual work involved, as described by the Landlord, and stated this was involving drywall only, and would not necessitate their having to move out from the rental unit, or an end to the tenancy.

Analysis

The *Act* s. 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 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* provides that the Director must grant an order ending the tenancy in respect of, and an order of possession of, a rental unit if the Director is satisfied that all the circumstances in the above subsection (1) apply.

The *Residential Tenancy Policy Guidelines*, in particular *2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use* provides the following information regarding permits:

> *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.*
> *…*
>
> *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.*

The same policy guideline provides the following information on defining “renovations” or “repairs:

> ***Vacancy Requirement***
>
> *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.

. . .

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs "objectively" are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant's willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

Based on the testimony and evidence provided by the Landlord, who bears the burden of proof on the issue of required vacant possession, I find as follows:

- The Landlord did not describe all aspects of the work involved to a sufficient degree in this hearing. I find there is not an accurate item-by-item list of the work involved, in order to determine the scope of work that would impact the tenancy.
- The Landlord was not precise on all pieces of work needing to be completed or what they intend to work on. I am not satisfied the Landlord's description was comprehensive and covered all pieces; otherwise, the ceiling/walls, and some vague description of work needed on a drain is not accurate in detail.

- Because of this, I am not satisfied the work involved is of such a nature that it requires vacancy, due to no proof that the work makes it unsafe for the Tenant to remain.
- There is no proof the Tenant cannot stay in the rental unit while the work is being completed, minus some discomfort or temporary loss of use of some parts of the rental unit.
- I find there is no proof that the work involved does not require major structural changes or other hazardous work that makes the unit unlivable.
- The Landlord did not provide evidence to show why such work could not be completed in phases, rather than have complete vacancy for their own convenience.
- Additionally, the Landlord did not show the timeframe would be prolonged to such an extent that the Tenant could not take up residence elsewhere for a brief period while the essential work was completed.

In summary, I find the Landlord has not met the onus to prove that the tenancy must end, pursuant to s. 49.2(1) of the *Act*, for the above noted reasons. I dismiss the Landlord's Application, without leave to reapply.

Conclusion

I dismiss the Landlord's application, without leave to reapply. I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 6, 2024

Residential Tenancy Branch