

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") dated November 21, 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 Issue

- Res Judicata

The Tenant advised that a previous hearing was conducted on November 10, 2023, where the Landlord sought vacant possession of the rental unit to perform renovations or repairs and the Arbitrator dismissed that claim (decision noted on cover page). The Tenant argued this hearing should not be happening again as the previous Arbitrator dismissed the application without leave to reapply due to insufficient evidence.

Res Judicata is the principle that a final decision, determined by a competent court, made on the merits of the claim, may not be pursued further by the same parties. At first instance this application would invoke the principle of *Res Judicata*; however, I still must determine, as a matter of discretion, whether the principle should be applied. The ultimate question that must be answered is when applying the principle would it be unfair or unjust?

The only avenue for a landlord who wants to make significant renovations or repairs to a rental unit is to apply for vacant possession through the RTB and the Act does not provide any alternative avenue. As such, to apply the principle of *Res Judicata* would prejudice a landlord to such a great degree that they would be prohibited from renovating or repairing a rental unit during a tenancy if they made an application and it

is dismissed. Therefore, I find that I must decline to apply to principle of *Res Judicata* and the Landlord is not prohibited from making this application.

Background and Evidence

The tenancy began April 11, 2017, with a monthly rent of \$750.00, due on the first of each month.

The Landlords' position is that the rental unit was built around 1960 and they purchased the rental unit at least 10 years ago and have not completed any work on the rental unit. The Landlord was unable to advise if work was done by the previous owner but argued based on the current state of the rental unit, they believe it is in its original condition. The Landlord argued they are going to gut the entire rental unit and renovate it. A rendering of what the rental unit will look like after it is gutted was provide into evidence. The Landlord advised that the rental unit is failing, and the renovations are needed to bring it to a livable standard. When asked what aspects of the rental unit were failing the Landlord advised there was an infestation of bed bugs which impacted the sale of the rental unit, the appliances are failing, the drywall and baseboards are decrepit, and the ceiling is old and needs refurbishing. Photographs of the rental unit were provided into evidence.

The Landlord advised they received an estimate from a building company which advised the renovation would cost approximately \$100,000.00 not including the kitchen and would take at least 4 months. The Landlord argued they will take on the renovations to the kitchen themselves which will add additional time to the renovation. A copy of the estimate was not provided into evidence, but the Tenant confirmed individuals came to the rental unit to do an assessment.

The Landlord says they do not require permits for the current scope of renovations and repairs. In support of this the Landlord provided an email from the city building inspector and the residential property Bylaws.

The Landlord believes it would be unsafe and inconvenient for the Tenant to remain in the unit because all appliances will be removed, and there will be no water, gas, electricity, or cooking facilities. The Landlord argued the renovations cannot be completed in stages as this would not make economical sense and asbestos assessments need to be undertaken which is hazardous.

The Tenant advised they have looked for new rentals but cannot find anything comparable in the area.

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

I accept the Landlord intends to renovate the rental unit. I accept the evidence from the Landlord that permits are not required for the renovations or repairs, based on the written confirmation from the city building inspector and the residential property Bylaws.

(b) Vacancy required

According to Policy 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.

Given the extensive nature of the renovations, which will involve gutting the entire rental unit, it is reasonable to conclude that the rental unit will need to be vacant for at least 4 months to complete the entire renovations. Additionally, given that services such as heat, water and electricity will be turned off and all appliances removed, the rental unit would not be safe for occupation during this time.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord would improve the rental unit. However, based on the submissions and evidence much of the renovation as described are to modernize or update the rental unit.

The Landlord has not provided evidence that the renovations are necessary to sustain the life of the rental unit, for example, that the renovations will improve the safety of the building. While the Landlord advised they have owned the property for over 10 years and it looks like it is in its original condition from the 1960s, there is no documentary evidence to support the age of any component of the rental unit or why these repairs are necessary. While the Landlord argued appliances, drywall and baseboards are decrepit and the ceiling is old, no documentary evidence was provided to support this, and the photographs provided by the Landlord only show an outdated rental unit. I find the Landlord failed to provide any documentary evidence to establish why the renovations are necessary to sustain the life of the rental unit. For example, there are no reports or invoices from a certified technician that a component is failing, does not meet the required code, are a safety hazard or are past their useful life.

I find the Landlord has not established the necessity of the renovation 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.

While the renovations are expected to take at least 4 months, the Landlord has failed to establish requirement (c) above.

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, with 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: February 14, 2024

Residential Tenancy Branch