

DECISION

Dispute Code PFR

Introduction

This matter was convened to hear an Application for Dispute Resolution, made by the Landlord on December 13, 2023. The Landlord seeks an order for vacant possession of the rental unit for renovation or repairs, pursuant to section 49.2 of the Residential Tenancy Act (the Act).

The Landlord attended the hearing and was represented by MS, legal counsel. The Tenant attended the hearing and was represented by DK, legal counsel. CT attended the hearing as an observer but did not participate. The parties provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, MS advised that the Landlord served the Notice of Dispute Resolution Proceeding package on the Tenant by registered mail on December 21, 2023. DK acknowledged receipt on behalf of the Tenant.

The Tenant testified the evidence upon which they intend to rely was served on the Landlord by email it to MS on February 2, 2024. MS acknowledged receipt on behalf of the Landlord.

Initially, MS raised an issue with respect to written submissions provided by DK after the deadline to submit evidence had expired. However, during the hearing, MS indicated he was prepared to permit me to consider the Tenant's written submissions but requested that he be given an opportunity to respond to them during the hearing.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

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

Background and Evidence

The parties agreed the tenancy began in June 2019. Currently, rent of \$1,810.00 per month is due. The parties agreed the Tenant paid a security deposit of \$770.00 and a pet damage deposit of \$770.00, which the Landlord holds.

The Landlord seeks an order granting vacant possession of the rental unit for renovations or repairs. Specifically, MS advised the Tenant occupies a lower, two-bedroom unit in the rental property. On June 14, 2023, the hot water tank burst, flooding the rental unit. Although a restoration company attended the rental unit to perform emergency remediation, the work could not be completed because the rental unit was not vacant. In support, the Landlord submitted a copy of correspondence from the emergency remediation company, dated June 23, 2023. In the time since the flooding, mold has developed throughout the rental unit.

The Landlord submitted a document from a second restoration company, dated November 28, 2023, outlining the scope of the work to be completed. It describes work in the entrance, kitchen, living room, hallways, and bedroom. A hand-drawn schematic diagram of the rental unit showing the affected areas was also submitted in support of the extent of the damage.

MS stated that permits and approvals are not required for the work described in the scope of work document. In support, MS referred to email correspondence, dated December 6, 2023, from a local government representative. It indicates that the Landlord provided the local government with a copy of the scope of work document and was advised that no permits are necessary unless the scope changes.

MS asserted that vacancy is required. The Landlord relied on a document from the restoration company, dated November 28, 2023, states: "Premises must be cleared of all content and occupant during mould remediation process. Expected timeline for this project is 2-3 months."

In addition, MS stated that the remediation work is necessary to prolong or sustain the use of the rental unit. MS referred to photographic evidence of mold in the rental unit. The mold is depicted in the rental unit, although other areas may be impacted. MS also stated that there may be a need for more significant remediation if the mold has impacted the structure.

Further, MS asserted that the only reasonable way to achieve vacancy is to end the tenancy agreement. As noted in the document from the remediation company, the work will require 2-3 months to complete.

In reply, DK submitted that there are unanswered questions about what vacancy means. DK submitted that it is an onerous test the Landlord has to meet. DK acknowledged that the kitchen needs work but that the Tenant can stay in another room in the rental unit while that work is addressed. DK referred to correspondence from the emergency remediation company who suggested in email correspondence dated July 17, 2023, that the work could be completed if the Tenant's belongings were moved.

In addition, DK advised that there have been several previous dispute resolution hearings in relation to the flooding and the Landlord's desire to end the tenancy. DK advised that each has been unsuccessful, and that the Landlord was found on one occasion not to have acted in good faith.

Further, in response to questioning by DK, the Tenant testified that the rental unit "doesn't look positive." She stated that baseboards are falling off. The Tenant also referred to a hole in the closet wall which was unrelated to the flooding. The Tenant also testified that some of her belongings are now being stored in her bedroom because the door to the storage area has been removed due to the flood.

The Tenant also testified that she has been willing to accommodate repairs. She testified that she does not recall the restoration company coming into the rental unit and suggested that only the flooring needs to be repaired. The Tenant also testified that only half of the rental unit has been damaged, mainly the kitchen, and that she is able to live in other parts of the unit while that work is underway.

DK provided written submissions on behalf of the Tenant. The written submission provides a chronology of relevant events and the Tenants' legal arguments. Specifically, citing the relevant portions of the Act and Policy Guideline #2B, the Tenant asserted that the Landlord is not acting in good faith, that it is unnecessary for the rental unit to be vacant. The Tenant also advised that, despite a request that a representative from

the restoration company attend to elaborate on the reason for vacant possession, the Landlord declined to do so.

In response to the Tenant's written submissions, MS again stated that the emergency remediation company did not do the work because of the presence of the Tenant and her belongings. MS also repeated that the subsequent restoration company has advised that the renovations and repairs contained in the scope of work document will take 2-3 months.

Analysis

Based on the affirmed oral testimony and documentary evidence and submissions, and on a balance of probabilities, I find:

Section 49.2 of the Act permits a landlord to make an application requesting an order ending a tenancy if all of the following apply:

- 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;
- the renovations or repairs require the rental unit to be vacant;
- 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;
- the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

With respect to the first requirement, Policy Guideline #2B indicates that good faith requires an honest intention with no dishonest motive. It means that a landlord intends to do what they say they are going to do, and not to defraud or deceive the tenant. The onus of proving a landlord is acting in good faith rests with the landlord.

I find the Landlord has provided sufficient evidence for me to conclude that he is acting in good faith. Despite the outcome of previous dispute resolution proceedings, it is undisputed that the flooding caused damage to the rental unit and that mold has developed throughout the rental unit as a result. I accept that the renovation and repair work contained in the scope of work documents submitted is necessary, and that the Landlord intends to complete this work. I also find, based on the correspondence from the local government representative, that the proposed renovations and repairs contained in the scope of work document do not require permits.

With respect to the second requirement, Policy Guideline #2B indicates that any period of time in which the rental unit must be vacant is sufficient to meet this requirement. However, generally, the renovations or repairs must be “extensive.” The question is whether the “nature and extent” of the renovations or repairs require the rental unit to be vacant.

I accept that the renovations and repairs are extensive and are not limited to the kitchen, as suggested by the Tenant. As a result, I find that the renovations and repairs require the rental unit to be vacant. Despite the Tenant’s willingness to remain in the rental unit while work is being completed, correspondence from the restoration company states: “Premises must be cleared of all content and occupant during mould remediation process. Expected timeline for this project is 2-3 months.” In response to the email correspondence from the emergency remediation company, dated July 17, 2023, I find it is more likely than not that this was in reference only to the remediation work. I also note the email requests that the Tenant vacate the rental unit or the duration of the remediation work.

In addition, and in response to the Tenant’s suggestion that the Landlord failed to provide a requested witness to elaborate on the reason vacant possession was required, I note that it is the director who is tasked with deciding whether or not vacant possession is required, based on the evidence and submissions provided.

With respect to the third component, Policy Guideline #2B acknowledges that renovation and repairs are necessary to the life cycle of a building.

I find that the renovation and repair work contained in the scope of work document is necessary to prolong or sustain the use of the rental unit. I accept that mold has developed in the rental unit and that renovation and repair is needed to address it.

With respect to the fourth requirement, Policy Guideline #2B indicates 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, 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.

I accept that, viewed objectively, the renovation and repair work require vacant possession of the rental unit. I accept that mold needs to be addresses throughout the rental unit and that it is not viable for the Tenant to remain in the rental unit while the

work is being completed. I again note that the timeline for the renovation and repair work is 2-3 months.

Considering the above, I find the Landlord has demonstrated an entitlement to vacant possession of the rental unit and an order of possession. Pursuant to section 49.2(4) of the Act, the order of possession will be effective on June 30, 2024, at 1:00 p.m.

NOTE: Policy Guideline #2B confirms that a tenant may apply for an order for compensation under section 51.4 of the Act if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the Act, and the landlord did not accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.

Conclusion

The Landlord is granted an order of possession, which will be effective on June 30, 2024, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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 13, 2024

Residential Tenancy Branch