



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TEBRINKE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 8, 2024. The Landlord applied for an order of possession for the 5 rental units located in 2 different adjacent buildings in order to perform renovations or repairs that require the rental units to be vacant, under section 49.2(1) of the *Residential Tenancy Act* ("the Act").

4 Tenants attended the hearing as well as the Landlord and their legal counsel. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord stated they served all Tenant's with the Notice of Dispute Resolution Proceeding and evidence by registered mail in December, as per the tracking information provided. The Landlord also served a second package to the Tenants on February 20, 2024, by posting it to the doors of the respective units. None of the Tenants present disputed that these documents were served as noted above. I find the Landlord sufficiently served all documents and the Notice of Dispute Resolution Proceeding. The Tenants did not provide any documentary evidence.

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.

Issue to be Decided

- Does the tenancy need to end in order for the Landlord to perform renovations or repairs that require the rental unit to be vacant?

Background and Evidence

The Landlord explained that this application was initially for 14 units spread across 3 different buildings, but since they applied, they have come to an agreement with several of



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the units, and they wanted to amend their application to only proceed against the 5 remaining units, without an agreement in place.

The Landlord stated that the three buildings are all built in the 1970's, with largely original plumbing, electrical, and other building components. The Landlord stated that recently, in November 2023, their insurance provided threatened to cancel their policy if the plumbing (Poly-B piping), heating and electrical was not updated. The Landlord stated that this expedited the need for repairs, but the repairs are also needed because the building is old and the plumbing is not safe anymore. A copy of the insurance letter was provided, as were detailed affidavits from the Landlord detailing what work is to be done, and why. In summary, the work is necessary so that the critical plumbing and electrical work can be completed, and this work required the opening of interior walls and floors. Reports from the asbestos remediation company were provided showing there is asbestos containing material in floors and walls, and that the units must be vacant to safely remediate the material, prior to the plumbing and electrical work being completed.

The Landlord is also taking the opportunity to do further improvements in the units in order to bring them up to date and up to code. The Landlord has detailed over \$775,000.00 in renovations that are set to occur in the next few months. The Landlord stated that the renovations in each of the respective units will take around 3 months, which is based off actual time frames for units they have already renovated that were vacant.

The Landlord stated that they obtained all the necessary permits required to undertake the plumbing and building modifications in November 2023, which was well before they filed this application. The Landlord has since also obtained an electrical permit to complete other ancillary electrical work.

One of the Tenants questioned why there has been no HAZMAT teams in the buildings yet, since the Landlord has completed work in a couple of the units. The Landlord confirmed that HAZMAT has been used in those units, despite what the Tenant asserts. The Tenant also questioned why the Landlord has not obtained several quotes from other insurers to see if coverage can be maintained without doing the upgrades. The Landlord pointed out that the building components are end-of-life, and it is not just about insurance, as the work needs to be done.

Analysis

Section 49.2(1) of the Act provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:



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- (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 a 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.

Residential Tenancy Branch Policy Guideline # 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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:



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Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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 above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

I find the testimony and evidence of the Landlord demonstrates a good faith intention to improve and renovate aging building components, in part because their insurance has demanded the repairs be done. I find the Landlord has sufficiently demonstrated their good faith intentions with the repairs that they will be undertaking, including the necessary scope. Further, I am also satisfied the Landlord has obtained the necessary permits required by law to undertake the majority of the work to be done. The building permit allows the Landlord to open up walls and repair the plumbing and this was obtained before the application was made.

Next, I am satisfied that, due to the hazardous nature of some of the building components (asbestos confirmed in flooring and walls) and the scope of the work (open up many walls and floors for access), that vacancy is required for this work to be completed. Further, I am satisfied that the renovations are necessary to prolong the life of the building, given its aging and outdated critical infrastructure (notably the poly-B plumbing). I also note the renovations are significant enough that they will require the Tenants to vacate for about 3 months, which suggests that it is reasonable that the tenancy must end to facilitate the work.

I accept that this process is complex, and stressful for the Tenants involved, and some expressed concern over how to find suitable housing. However, overall, I find the Landlord has sufficiently demonstrated the necessary criteria above. I encourage the Landlord and the Tenants work together as much as possible in terms of timelines and other requirements.

Having determined that all of the requirements in Section 49.2 (1) of the *Act* are met, I must grant an Order ending a tenancy and an Order of Possession. Therefore, it is Ordered that the tenancy will end on July 31, 2024, unless the Tenants choose to end it earlier under Section 50 of the *Act*.

An Order of Possession with an effective date of July 31, 2024, is issued with this Decision to the Landlord. The Landlord must serve a copy of the Order of Possession upon the Tenants no later than March 31, 2024.

Conclusion

The Application for an Order under Section 49.2 of the *Act* is granted.

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: March 11, 2024

Residential Tenancy Branch