



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      PFR

### Introduction

This hearing dealt with a Landlord's application made under section 49.2 of the Act for an order ending the tenancy and providing the Landlord with an Order of Possession so that the Landlord may make repairs or renovations.

The Landlord was represented by an agent at the hearing. Both of the Tenants appeared for the hearing. The parties were affirmed.

I confirmed the Tenants received the Landlord's application and evidence by registered mail. Accordingly, I admitted the Landlord's materials for consideration in making this decision.

I noted the Tenants had not submitted documents prior to the hearing. The Tenants confirmed they intended to provide their position orally during the hearing.

### Issue(s) to be Decided

Has the Landlord established an entitlement to end the tenancy for repairs or renovations under section 49.2 of the Act?

### Background and Evidence

The Landlord's agent at the hearing did not have any knowledge of the tenancy history or tenancy agreement for the subject property and I was provided this information by the Tenants.

The Tenants testified that they started a tenancy for the subject property 23 years ago, in September 2001, and they paid a security deposit of \$675.00. Over the years, the

rent has increased and the Tenants are currently paying a monthly rent of \$2,800.00 due on the first day of every month.

The rental unit was described as an older house that has four bedrooms, two bathrooms, one kitchen and laundry room on two floors.

The Landlord's agent submitted that the plumbing in the rental unit is not to code and is a hazard given the proximity of plumbing lines to the electrical panel. The Landlord's agent submitted the existing plumbing lines are known as "Poly B" which is prone to leaking and is no longer a permissible material for plumbing lines. The plumbing lines need to be replaced so as to ensure the plumbing is to code and electrical safety.

The Landlord obtained a quotation from a contractor to replace the plumbing lines on November 25, 2023 and on November 28, 2023 the landlord and the contractor entered into a contract for the work to be completed. The contract provides that the work would commence on January 15, 2024. The contractor applied for a plumbing permit on December 5, 2023 and it was issued by the city on December 11, 2023. The quotation, contract and plumbing permit were submitted into evidence by the Landlord.

I noted that the sales rep named on the quotation and the contract has the same name as the Landlord's agent. The Landlord's agent confirmed that he is also the sales rep for the contractor and that he did not know the Landlord or have any relationship with the Landlord before entering into the contract.

The Landlord's agent submitted that the rental unit needs to be vacated because a person cannot live through a re-piping project. The Landlord's agent estimates that the project will take 2 to 3 months to complete. The Landlord's agent explained that in order to re-pipe the house the walls need to be torn down to expose the existing water lines, remove them and install new lines. After the lines are replaced, the walls and ceiling need to be replaced. The Landlord's agent clarified that in stating the walls need to come down he means the wall covering such as drywall or plaster. The Landlord's agent acknowledged there has not been any testing for asbestos done yet.

Considering the rental unit is Tenanted and the contract stipulates that the work was set to commence on January 15, 2024 I asked the Landlord's agent whether the Landlord had informed the contractor the house was tenanted. The Landlord's agent responded that he was unaware of that when the quotation and contract was prepared and that the Landlord notified him of this fact at around Christmastime in December 2023. The

Landlord's agent acknowledged that no work has commenced and attributes this to the Tenants remaining in the rental unit. As such, no new start date has been set yet.

The Tenants responded that the Landlord has told the Tenants that their rent is low and that the Landlord wants to renovate the rental unit on numerous occasions. In September 2023 the Landlord told the Tenant that she wants to renovate the rental unit but was not specific as to what type of renovation she intended to do. The Landlord said this again in late September 2023 or early October 2023 when the Tenant paid rent for October 2023 and the Tenant suggested the Landlord serve the Tenants with the appropriate notice to end tenancy but the Landlord stated she would not do that. The Tenants only learned of the re-piping project when they were served with the Landlord's application and evidence in December 2023.

The Tenants pointed out that the Landlord had the basement bathroom renovated in October 2022 and the Tenants agreed to increase the rent to reflect that when they entered into a new tenancy agreement in January 2023. The Landlord and Tenants also contemplated new kitchen cabinets were going to be installed in 2023 and another rent increase but the Landlord did not instal the new cabinets so the rent did not increase any further.

The Tenants submit the above with a view to demonstrating they have been accommodating and agreeable to the Landlord's desire to renovate and increase the rent in the past. The Tenants are of the position they can accommodate the re-piping and the Landlord does not need to the Tenants to move out and have the tenancy ended to accomplish the re-piping. he Tenants suggest that the Landlord's request to regain vacant possession of the house is because the Landlord frequently makes comments about their rent being too low.

I asked the Landlord's agent if there had been any consideration to performing the re-piping in phases or sections while preserving the tenancy. The Landlord's agents stated that it was not considered in preparing the quote or contract.

### Analysis

This application is made under section 49.2 of the Act. Section 49.2 provides a mechanism for a landlord to seek an end to the tenancy in order to make significant repairs or renovations to the property. To succeed in such an application, a landlord bears the burden to prove **all** of the following:

- (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.**

[My emphasis added]

Residential Tenancy Policy Guideline 2B provides information and policy statements with respect to ending a tenancy for repairs or renovations, including the good faith requirement. The policy guideline states, in part:

### **GOOD FAITH**

In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the Landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 (section 32(1) of the RTA).

If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the Landlord would not be acting in good faith.

If evidence shows the Landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the Landlord is not acting in good faith in a present case.

I find the actions of the Landlord and her agent, as I understand them based on the testimony of her agent, to be highly unusual and incredible. The Landlord's agent states that he met the Landlord when she sought a plumbing quotation but did not have any other relationship with the Landlord. The Landlord requested a plumbing replacement quotation from the agent, acting as a sales rep for a contractor at the time, without informing the sales rep that the house was tenanted and occupied by tenants, which would be a significant factor in my view. Then on November 28, 2023, the Landlord and the contractor agree to commence the re-piping project on January 15, 2024 when only one of the parties to the contract had knowledge that there was a tenancy in place and the rental unit would be occupied by tenants on the commencement date, which is a significant omission on part of the Landlord. Then, after the contract has been executed and a plumbing permit is obtained by the contractor, the Landlord informs the sales rep that the rental unit is in fact tenanted and the Landlord requests the sales rep attend this hearing as her agent, without the Landlord attending the hearing.

During the hearing, the Tenants called into question the Landlord's good faith intention, pointing to the Landlord's previous statements to them that the Landlord wants to make unspecified renovations to the property, the Landlord's previous requests to increase the monthly rent, and the Tenants are paying rent that is too low.

Where a tenant called into question the landlord's good faith intention, the landlord bears the burden to prove the landlord only has a good faith intention. That includes responding to the alleged statements made by the Landlord in the past. In this case, the Landlord's agent was not privy to the tenancy history or previous discussions between the parties concerning rent and renovations. As such, I find the Landlord's agent was ill prepared to respond to the Tenant's submissions or otherwise provide submissions as to the Landlord's good faith intention in seeking to end the tenancy.

In addition to establishing a good faith intention, the Landlord must also demonstrate that the rental unit needs to be vacated in order to perform the repair or renovation. Policy guideline 2B also provides the following, in part, with respect to the vacancy requirement:

## **D. RENOVATIONS OR REPAIRS**

### **Vacancy requirement**

Section 49.2 allows a Landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. Any period of time in which the unit must be vacant is sufficient to meet this requirement.

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.

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. 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.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

Under Appendix A of policy guideline 2B, re-piping is described as usually having a minimal impact on tenants and does not usually require a rental unit to be vacant in order to re-pipe. Since the Landlord's agent asserts that a person cannot live through the re-piping, which differs from the policy guideline, I have considered whether the Landlord has established that the re-piping of this property is significantly different than re-piping at other properties.

The Landlord's agent testified that in order to re-pipe, the walls will need to come down, although the agent clarified this means the wall covering needs to be removed, not the wall framing. The Landlord's agent also testified that it has not been determined where the water lines are running exactly and it is uncertain which walls or rooms will be affected by the re-piping. To me, this does not sound unusual compared to other re-piping projects except that perhaps additional testing and planning needs to be performed. For example, the Landlord's agent acknowledged that the building may contain asbestos but that testing has not been done yet. Given the uncertainties, I find it hard to understand how the Landlord's agent has determined the amount of time the project will take and that this house needs to be vacant compared to most rental units that do not need to be vacant in order to re-pipe.

The Tenants state they are able and willing to accommodate the re-piping project by moving their possessions out of the way of the work area and dealing with temporary water outages so that they do not need to completely vacate the property and have the tenancy ended. If the re-piping were done in sections or phases, I do not see a reason the entire house needs to be vacated and the tenancy ended.

In hearing from the Landlord's agent, I find I was not persuaded that the entire rental unit needs to be vacated and the tenancy ended in order to re-pipe the house and I find it more likely that the Landlord has not considered performing the re-piping in sections or phases because the Landlord is more motivated to end the tenancy due to the low rent the Tenants are paying.

### Conclusion

The Landlord's request to end the tenancy in order to re-pipe the rental unit is dismissed and the tenancy continues at this time.

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 06, 2024

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Residential Tenancy Branch