



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to an application from the Landlord, dated March 25, 2024. The Landlord seeks an order for vacant possession for repairs/renovations to the Rental Unit under section 49.2 of the *Act*.

### **Service of Records**

The Tenants acknowledged receipt of the Landlord's application and documentary evidence, by registered mail, in accordance with sections 88 and 89 of the *Act*. The Tenants acknowledged that they have not submitted any documentary evidence to the Residential Tenancy Branch for consideration.

### **Background Facts and Evidence**

I have reviewed all evidence, including the testimony of the parties, but I will refer only to what I find relevant to my decision.

The parties agreed that this tenancy began on May 16, 2018, that the current monthly rent is \$2,950.00, and that the Tenants paid a security deposit in the amount of \$1,450.00 at the start of this tenancy.

The parties agreed that the bulk of the bedrooms in the Rental Unit, which was built in 1987, are on the second floor of the Rental Unit, while the lower portion of the Rental Unit incorporates a kitchen, a family room, a laundry room, a dining room and one of the five bedrooms.

The Landlord testified that they are seeking an order of possession from the director primarily because they are intending to add a secondary suite to the single-family which the Tenants are renting in full. The Landlord testified that they are also intending to complete repairs to the second floor of the Rental Unit, due to "flooding".

The Landlord submitted a permit from the local municipality, dated March 13, 2024 (the **Permit**). During the hearing I reviewed the Permit with the Landlord and the Tenants. Page one of the Permit describes the proposed work as follows: "S/S Created in

Finished Area". Elsewhere on the Permit, work description is described as follows: "Permit for secondary suite."

On the Permit I can see the sentence "Separate electrical and plumbing permits required". The Landlord testified that they currently do not have the required electrical and plumbing permits, but they testified that their engineer has informed them that when construction begins, their contractors will apply for those permits themselves. They testified that the only permit required to begin construction is the Permit before me, which is a building permit.

The Landlord did not submit any engineering drawings, plans, correspondence, or additional documents regarding the proposed work.

The Landlord testified that construction to build the secondary suite will take approximately six months. They testified that the Rental Unit must be vacant, because of "noise and safety reasons."

The Landlord testified that they have not personally contacted any contractors, but their engineer is in contact with contractors. They testified that when the secondary suite is constructed, the Landlord intends to move into one of the two suites and rent out the other, but they were uncertain of which suite they would occupy. The Landlord testified that each suite would have separate entrances.

Tenant DA testified that they are unsure what flooding the Landlord is referring to and that the only water related issue in the Rental Unit is leaks in the roof of the Rental Unit's garage. The Landlord did not submit any documentary evidence related to water damage on the second floor of the Rental Unit nor did they submit documentary evidence of a "flooding" incident.

The Tenants testified that prior to being served with this application, they had no discussions with the Landlord or any notice that the Landlord was intending to add a secondary suite.

## **Analysis**

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

When two parties provide equally plausible testimonies, it is the party with the onus to prove their claim (in this case, the Landlord) that must provide evidence above and beyond their oral testimony to be successful. In this case, the Landlord testified that the upper floor of the Rental Unit was flooded. This testimony was disputed by the Tenants.

The Landlord did not object to the Tenants' surprise and did not clarify their statement that the Rental Unit's upper floor was flooded. The Tenants testified that the only ongoing concern is roof leaks above the garage. Irrespective of where the roof leaks are, if any, the Landlord bears the onus to prove that the Rental Unit must be vacant for repairs to take place.

The bulk of the Landlord's testimony and documentary evidence, including the Permit, was in regard to the desired secondary suite. They testified that they need the Rental Unit to be vacant because they are intending to construct a secondary suite, which construction will take six months and approximately \$50,000.00 to complete.

Section 49.2 of the *Act* set out the requirements that must be satisfied by a landlord to be successful in such an application. Section 49.2(1) states 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:

- (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 Landlord must provide evidence to prove each of the above-cited four elements.

The Residential Tenancy Policy Guideline 2B provides the following:

*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.

Policy Guideline 2B further provides guidance on what constitutes renovations or repairs necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located:

Renovations and repairs are important to the life cycle of a building. As buildings age this work is necessary to ensure the rental unit and the building in which it is located remain safe for the tenants. Some examples of these necessary renovations or repairs include:

- Undertaking seismic upgrades
- Updating electric wiring to code

- Installing or replacing a sprinkler system to ensure the building meets codes related to fire safety.

Even if I accept the Landlord's evidence that 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, I must still find, on a balance of probabilities, that the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building.

In this case, I find that the Landlord has not met their burden to prove the third requirement of section 49.2 of the *Act*, which is that the secondary suite is necessary to prolong or sustain the use of the rental unit or the building in which the Rental Unit is in. I make no findings regarding the other subsections of 49.2. The evidence before me is that once the secondary suite is constructed, the Landlord will be occupying one suite and renting the other. The construction of the secondary suite is not renovations or repairs that is intended to prolong or sustain the use of the Rental Unit.

The Landlord's desire to add a secondary suite, perhaps for additional income, is a personal choice by the Landlord, not a necessity. I cannot find, based on the evidence before me, that there is any water damage inside the Rental Unit, let alone making a finding that the Rental Unit must be vacant to perform necessary repairs caused by water damage.

As the Landlord has not satisfied all of the requirements of section 49.2 of the *Act*, I find that they are not entitled to an order for vacant possession of the Rental Unit from the director.

## **Conclusion**

The Landlord's application is dismissed, without 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 *Residential Tenancy Act*.

Dated: April 29, 2024

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Residential Tenancy Branch