



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for vacant possession of the rental unit to perform renovations or repairs to the rental unit.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on April 25, 2024, in person in accordance with section 89(1) of the Act.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act.

I find that no evidence was served by the Tenant. The Tenant confirmed that he did not submit any evidence.

Issues to be Decided

Are the Landlords entitled to an Order of Possession of the rental unit to perform renovations or repairs?

Background and Evidence

I will refer only to what evidence and testimony I find relevant to my decision.

Testimony was provided indicating that this verbal tenancy began on April 1, 2011, with an initial monthly rent of \$825.00, due on first day of the month.

According to the Landlords, the property was purchased on February 8, 2024. They testified that the property requires extensive renovations and that they have the permits required to undertake them.

Landlord A.K. testified that the roof, windows and sliding doors in the property have all been damaged by water. He further testified that the basement floods on a regular basis and there is evidence that the foundation may be compromised. He stated that the walls and flooring contain asbestos which must be removed, and that mold has been found and is suspected to be throughout the entire house which requires the removal of all drywall and flooring and possibly the subflooring to remedy.

Landlord A.K. testified that they also intend to remove and replace the exterior deck which is rotting and unsafe and to fix or replace a cracked roof joist which is a significant structural issue. He testified that the electrical system in the home is unsafe and poses a serious safety risk to the Tenant and that carbon monoxide has been detected in the home. He further testified that the kitchen cabinetry is falling apart and needs to be replaced, and that the plumbing is in disrepair and needs to be upgraded and in some areas rerouted.

Landlord A.K. testified that the renovations will take three to six months to complete and that it is unrealistic for the Tenant to continue to live in the home during the renovations as all the windows will be removed and the hydro and water will be turned off while portions of the work is underway. He stated the kitchen itself will be out of service for three to four weeks itself and the environment will be toxic while the floors and drywall are removed due to the exposed asbestos and mold. Copies of a building permit, a Limited Pre-Renovation Suspect Hazardous Material Report, Residential Report and Site Plan/ Floor Plan were submitted as evidence by the Landlords.

The Landlords further testified that they had received a letter from a former tenant outlining the unsuitable living conditions in the home. A copy of the letter was submitted as evidence by the Landlord.

According to the Tenant, there was a problem with the electrical panel, but it has since been fixed. He testified that the kitchen cabinetry is old but is not falling apart. He further testified that the only issue with the plumbing is that the kitchen sink drips and there's a small leak in the bathroom. He stated that the windows are all single pane and that some do need replacing as there are large gaps in the frame but argued that this is not a problem as he simply applies spray foam during the winter months to seal out the weather.

The Tenant testified that the deck is structurally sound and only requires the replacement of some boards to make it safe. He confirmed that there is a cracked roof joist in the attic but argued that this can be repaired. He also confirmed that there is mold in the house but only in one spare bedroom due to the lack of a vapour barrier.

The Tenant confirmed that the basement has flooded, and testified that water has come in through the chimney but stated that it was only on one occasion.

Occupant J.H. confirmed the Tenant's testimony that there is only mold in one room in the house, which in her opinion can easily be addressed by installing vapour barrier, but stated that it is not present throughout the home as claimed by the Landlords. She argued that any rooms with asbestos can be isolated and remediated as needed. She testified that the windows don't leak very much and that most are in fact double paned. Occupant J.H. confirmed the Tenant's testimony regarding the kitchen, electrical system and plumbing. She argued that any exterior work such as drainage renovations do not require the residents to vacate the property to be completed. She further argued that the former tenant's letter, written in December 2023, is not credible and that all of the renovations specified by the Landlords could be completed in stages and therefore they should not have to move out.

The Landlords argued that the work to be undertaken is all necessary to preserve the integrity of the home and to extend the life of the property and that failure to address them will result in the ongoing deterioration of the residence. They argued that the renovations, which are both extensive and necessary, cannot be done on a patch work basis which would significantly increase the costs and hinder their access to available contractors who would be disinclined to do the work in bits and pieces.

Analysis

Is the Landlord entitled to an Order of Possession of the rental unit to perform renovations or repairs?

Section 49.2(1) of the Act 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

According to *Residential Tenancy Branch Policy Guideline 2B (Policy Guideline 2B)*, permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit, and required permits must have been valid at the time the application to end the tenancy was made.

I find on a balance of probabilities that the Landlord intends in good faith to renovate or repair the rental unit and that the Landlord has the required permits.

(b) Vacancy required

I find the Landlords have provided evidence that the unit contains hazardous materials such as asbestos and mold that would require the Tenant to vacate the unit for their health and safety.

I further find that the evidence provided shows that structural deficiencies exist in the roof, foundation and building envelope and that a significant amount of the interior walls and flooring must be replaced.

I find that due to the extent and nature of the required renovations, it would be untenable for the Landlords to complete the work in bits and pieces or to provide for a safe and healthy environment for the Tenant to live in while the renovations are underway.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord are necessary to sustain the life of the rental building.

(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.

I find the Landlords testimony, supported by reports authored by certified professionals, that the required renovations will take three to six months to complete to be credible.

I find therefore, that the Landlord has proven that it is necessary to end the tenancy agreement at this time to allow the Landlords to carry out the required renovations.

The Landlords' application for vacant possession of the rental unit for renovations is hereby granted.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on September 30, 2024, after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: May 31, 2024

Residential Tenancy Branch