

DECISION

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.

Issues to be Decided

Is the Landlord 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.

Evidence was provided showing that this tenancy began on February 18, 2012, with an initial monthly rent of \$800.00, due on first day of the month, and a security deposit of \$400.00.

The Landlord says the copper drainpipe serving the rental unit is estimated to be around 50 years old and has experienced multiple leaks in recent years. Plumbers have resorted to patching small sections of the pipe by cutting holes in the plywood below and reaching up to the pipe. However, during each repair, they cautioned that a substantial portion of the pipe is inaccessible from below, with the bottom being paper-thin, necessitating prompt replacement.

The Landlord says they must dismantle kitchen cabinets, remove the bathtub and surrounding tile, and extract sections of drywall where the pipe is located within the wall. They will open the floor where the pipe descends into the floor joist space. The Landlord says there would be no functioning kitchen or bathroom, and the dust and noise would be considerable for the duration of the renovation.

The Landlord provided a letter dated October 30, 2023, from a plumbing company, signed by their sibling who is also president of the plumbing company, indicating that permits are not required because the work entails replacing the plumbing that is already located in the rental unit.

The Landlord also submitted a copy of a portion of the local bylaws indicating that "no plumbing permit is required for the clearing of stoppages or repairing leaks in pipes,

valves or fixtures, when such repairs do not involve or require the rearrangement of valves, pipes, or fixtures or hot water tanks.”

The Tenant says they believe permits would be required for this scope of work. The Tenant questions whether the Landlord is acting in good faith. The Tenant says they are willing to vacate the unit for a reasonable length of time for the repairs to be completed.

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.

The Landlord acknowledges they do not have permits. The parties disagree whether a permit is necessary.

I find the bylaw submitted relates to clearing stoppages and repairing leaks. I find it likely, based on the Landlord’s submissions, that large sections of plumbing will be replaced rather than simply repaired. Therefore, I do not accept the Landlord’s evidence that a permit is not necessary.

(b) Vacancy required

Policy Guideline 2B suggests that re-piping the plumbing in a rental unit does not likely require vacancy. If I accept the Landlord’s submissions that the plumbing repairs do not require a permit, then I would find it more likely they do not require vacancy.

Although I accept the Landlord's position that the Tenant would not have access to the bathroom or kitchen during the renovation, I do not find that necessarily means the Tenant must vacate the rental unit if the Tenant is willing to endure the inconvenience of the renovation. For example, I find the Landlord has not provided evidence that the unit contains hazardous materials such as asbestos that would require the Tenant to vacate the unit for their health and safety.

I accept that the essential service, water, will be shut off while the plumbing is replaced. However, I find the Landlord has not supplied a work order, quote, estimate, or contract to explain the required length of time for vacancy in that regard.

(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.

In summary, I do not find it necessary to end the tenancy agreement at this time because the Landlord has not sufficiently established that they have the necessary permits or that vacancy is required. I find the Tenant is willing to accommodate repairs and renovations in the interest of continuing their tenancy.

Conclusion

I dismiss the Landlord's application, with 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 Act.

Dated: May 28, 2024

Residential Tenancy Branch