

## **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.

Landlord K.R. and Landlord K.S. attended the hearing for the Landlord.

Tenant A.D., Tenant M.C., and D.W. attended the hearing for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant was served on Mar 10, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Service of Evidence**

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

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

### **Issues to be Decided**

Is the Landlord entitled to an order of possession to perform renovations or repairs, pursuant to section 49.2 of the Act?

### **Background and Evidence**

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

On March 6, 2024, the Landlord applied for dispute resolution, seeking a vacant possession of the rental unit to perform renovations or repairs. In support of their application, they provided a copy of a building permit as well as an electrical permit.

At the hearing, the Landlord explained that they are looking to convert a downstairs suite into a legal conforming suite, and that as a result of the extent of the work that will be performed there will be significant disturbances to the rental unit upstairs, with interruptions to the Tenants' water and electricity as a result of upgrades to these services.

The upgrades envisioned will also require that a number of walls be opened up which has raised the possibility of a safety hazard if asbestos is detected. The Landlord also indicated they had a substantial amount of the flooring in the rental unit will need to be removed and replaced in order to accommodate plumbing upgrades.

### *Permits*

The Tenants disputed the Landlord's suggestion that the necessary permits for the anticipated construction had been obtained. They indicated that the building permit obtained for work did not indicate any work to be performed in the upstairs portion of the building. Rather, they asserted that every requirement noted in the building inspection document pertains to the legal suite being created downstairs. They also noted that the electrical permit was with respect to the creation of illegal suite in the basement.

### *Asbestos*

The Landlord said that the rental unit is located in a house that is quite old and there is potential that there is asbestos in the walls that may be disturbed in the course of any renovations and that this posed a health and safety risk to the Tenants. They added that they were informed by a professional asbestos testing company that they require that the rental unit be vacant in order test for asbestos. The Landlord was uncertain how long it would take for this testing to be completed.

The Tenant disputed the Landlord's suggestion that asbestos testing could not be completed unless the tenancy was ended. The Tenant said that his employment concerns seismic renovations of buildings. He said that he regularly works in schools where asbestos work is performed. He said that safety precautions are taken and that these schools continue to operate during the asbestos testing and remediation process.

DW said that he is a construction manager and had been in the construction industry for 35 years and said that there is no reason that as best as samples could not be taken in a matter of hours with areas remaining protected and habitable. He emphasized that this is the point of bringing in a professional company.

### *Plumbing*

The Landlord said that the water lines would be replaced and that this would require an interruption in water access for the Tenants which could last from 1.5 to 2.5 weeks.

The Tenants disputed the Landlords claim that the Landlord required vacancy for the purpose of replacing water lines and proposed that this plumbing work could be performed by opening up the ceiling of the suite underneath the rental unit. They noted that the downstairs suite had been vacant since April 2023.

### *Flooring*

The Landlord said that the replacement of the water lines would require replacement of the kitchen and bathroom floor of the rental unit.

The Tenants disputed the Landlords claim that the kitchen and bathroom floors needed to be disturbed or replaced, noting again that this plumbing work could be performed by opening up the ceiling of the vacant suite underneath the rental unit.

### *Electrical*

The Landlord said that they would be changing electrical wiring and outlets throughout the house to increase the amperage available and proposed that the house would need to be vacant for safety and efficiency. They added that the walls would need to be opened for this. The Landlord expected that there would be a power outage for an unknown duration but speculated that this could last as long as two to four weeks.

### *Carbon Monoxide Alarms*

The Landlord said that they would need to integrate carbon monoxide alarms on both levels of the house.

### *Framing and Drywall*

The Landlord stated that the creation of the legal suite downstairs would require framing and drywall work on both floors of the building.

### *Noise*

The Tenants indicated that they did not expect the noise from this work to be of disturbance to them as it would be performed during the day while they are attending to their own employment.

## **Analysis**

### **Is the Landlord entitled to an order of procession to perform renovations or repairs, pursuant to section 49.2 of the Act?**

Section 49.2 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 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*

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

However, I find that the Landlord has failed to establish that they have obtained all of the necessary permits and approvals required by law to carry out their renovations or repairs. Specifically, I find on a balance of probabilities that the Landlord has not shown that their building permit applies to the rental unit located in the upstairs portion of the building. In reaching this conclusion, I note that the description included in the building permit supplied by the Landlord states “To legalize a secondary suite.” The Landlord agreed during the hearing that the secondary suite being legalized is in the downstairs of the building.

In spite of the foregoing conclusion, and for greater certainty, I have also considered the Landlord’s assertion that an end to the tenancy is required in order to achieve the necessary vacancy of the rental unit.

*(b) Vacancy Required; (d)the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.*

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.

Residential Tenancy Branch Policy Guideline #2B indicates that the onus is on the Landlord to provide evidence that the planned work reasonably requires the tenancy to end.

Policy Guideline #2B also states that 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.

### *Asbestos*

Residential Tenancy Branch Policy Guideline #2B includes an Appendix with a table that provides guidance regarding common renovations or repairs.

With respect to asbestos, the following guidance is provided:

<u>Type of Renovation or Repair</u>	<u>Disruption to Tenants</u>	<u>Requires Vacancy?</u>
Minor asbestos remediation	Usually minimal	Unlikely

I find that the Landlord has failed to establish that they require the tenancy to end for the purpose of asbestos testing. I note that the Landlord did not provide an estimate as to the amount of time required to complete this testing. I have preferred the evidence of the Tenants, which is that limited testing for the purpose of detecting asbestos can be performed quickly and efficiently without endangering the safety of the occupants.

### *Plumbing*

Residential Tenancy Branch Policy Guideline #2B includes an Appendix with a table that provides guidance regarding common renovations or repairs.

With respect to plumbing, the following guidance is provided:

<u>Type of Renovation or Repair</u>	<u>Disruption to Tenants</u>	<u>Requires Vacancy?</u>
Re-pipe	Usually minimal	Unlikely

I find that the Landlord has failed to establish that they require the tenancy to end for the purpose of replacing the water lines and associated plumbing work. I note that the Landlord proposed that the water could be interrupted for a period of 1.5 to 2.5 weeks, a duration that is far less than the minimum 45-day period articulated in the guidelines.

### *Flooring*

I find that the Landlord has failed to establish that they require the tenancy to end as a result of a requirement that the flooring of the rental unit be substantially removed in order to accommodate replacement of water lines and associated plumbing. I note that the Landlord proposed that the water could be interrupted for a period of 1.5 to 2.5 weeks, a duration that is far less than the minimum 45-day period articulated in the guidelines.

I have also preferred the evidence of the Tenant which was that the plumbing replacement could be performed primarily via access through the ceiling of the downstairs suite, and that the removal of the flooring would not be necessary.

### *Electrical*

Residential Tenancy Branch Policy Guideline #2B includes an Appendix with a table that provides guidance regarding common renovations or repairs.

With respect to electrical, the following guidance is provided:

<u>Type of Renovation or Repair</u>	<u>Disruption to Tenants</u>	<u>Requires Vacancy?</u>
Electrical service replacement	Usually minimal	Unlikely
Replacing receptacles, switches	Usually minimal	Unlikely
Rewiring a circuit	Usually minimal	Unlikely
Full rewire of the rental unit	May be significant	May require vacancy

I find that the Landlord has failed to establish that they require the tenancy to end as a result of their anticipated electrical work. I note that the Landlord proposed that the electricity could be interrupted for a period of 2 to 4 weeks, a duration that is far less than the minimum 45-day period articulated in the guidelines.

### *Carbon Monoxide Alarms*

The Landlord said that they would need to integrate carbon monoxide alarms on both levels of the house.

I find that the Landlord has failed to establish that they require the tenancy to end as a result of the integration of carbon monoxide alarms. I note that the Landlord did not propose an estimate as to the time required for this.

### *Framing and Drywall*

The Landlord stated that the creation of the legal suite downstairs would require framing and drywall work on both floors of the building.

I find that the Landlord has failed to establish that they require the tenancy to end as a result of framing and drywall work on both floors of the building. I note that the Landlord did not propose an estimate as to the time required for this.

I find the Landlord has failed to establish that the planned work reasonably requires the tenancy to end. In reaching this conclusion, I note that the Landlord has indicated that they expect that each category of renovation or repair identified could be completed within 45 days.

As I have determined that the Landlord has not established that they have obtained the necessary or building permits or that the renovations or repairs reasonably requires the tenancy to end, I find it unnecessary to consider whether:

- (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;

I also note that the Landlord did not provide evidence indicating that the Tenant was unwilling to make arrangements for the purpose of accommodating the anticipated renovations or repairs.

## **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 Act.

Dated: May 24, 2024

---

Residential Tenancy Branch