



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1966 PANDOSY INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 26, 2024 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession pursuant to section 49.2(1) of the Act, which states:

Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 [*tenant's compensation: section 49.2 order*], 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.

At the start of the hearing, the Landlord's Counsel confirmed that the rental property consists of 26 rental units, however, there were only 7 remaining units that are occupied, and that have not come to a mutual agreement to end tenancy with the

Landlord. As such, the Landlord is seeking an order of possession for the above noted 7 units for the purpose of renovating the rental property.

The Landlord's Counsel submits that the Landlord's Proceeding Package was served to the Tenants by Canada Post Registered Mail on February 5, 2024. The Landlord provided the tracking information in support. The Landlord's Counsel submits that the Landlord served their documentary evidence package to the Tenants by posting it to their doors on March 29, 2024. The Landlord provided pictures in support.

The Tenants who attended the hearing confirmed receipt. I find that the above-mentioned documents were sufficiently served pursuant to Section 88, 89, and 90 of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Has the landlord provided sufficient evidence to support that an order of possession should be granted and which if granted, would be effective not earlier than 4 months after the date the order is made and comply with section 49.2(4) of the Act?

Background and Evidence

The Landlord has applied for an order of possession pursuant to section 49.2(1) of the Act. The Landlord is seeking vacant possession for the following reason;

“the invasive work taking place (electrical/plumbing located within wall cavities requires replacement). Asbestos is present in walls and will need to be removed. Remediation of plumbing will require complete shut off of each suite's plumbing (kitchen, bath). Insurers have requested updates to electrical in building – without such changes, insurers will not provide coverage. Occupants not permitted due to lack of services and risk to health and safety.”

The Landlord's Counsel stated that the Landlord has obtained permits to conduct the work. The Landlord provided the following permits;

- Electric Permit dated December 5, 2023,
- Plumbing Permit dated December 20, 2023.
- Building permit and drawings dated November 9, 2023

The Landlord provided an electric report which states;

“It has been determined that all branch conductors in the units are aluminum with the only exception being the range circuit. We feel due to the age of the building, this aluminum poses a risk. We are at a point in time where we are finding the aluminum wiring and outlets from the time period where it was used are breaking down quite frequently. Strugnell Electric is called out on a regular basis to troubleshoot and repair aluminum wiring issues which have melted receptacles and are black inside the outlet boxes due to arcing caused by air gaps between the aluminum and the point of attachment. This issue will only be magnified due to the buildings heating system which is hydronic baseboard heating. When the system is down or not keeping up to the tenants liking during the winter months, the only option for heat is to plug in electrical heating devices which would be the most hazardous thing to plug into the aluminum branch circuits.

We see a perfect storm happening, and for life safety we recommend a complete overhaul of the aluminum wiring to copper conductors only, as well as new electrical panels with more reliable breakers. In order for us to accomplish this, there will be a significant amount of drywall which will need to be removed so we can have access. This will require units to be without power for months while the repairs are made.”

The Landlord submitted a copy of a condition inspection of the rental property dated June 2, 2023. In the report, the plumbing is noted “The original copper piping remaining in the building has reached an age where pinhole type leaks may develop, and replacement might be necessary at any time.”

Relating to electrical, “all branch circuit wiring visible at the house panel was noted to be a mixture of copper and aluminum.... Aluminum wiring is considered a high risk by some insurance companies and may require replacement.”

The Landlord also provided a letter from their Insurer dated November 10, 2023 expressing safety concerns relating to the aging electrical and plumbing in the building, making it unlikely that the Landlord will receive coverage without conducting the required updates to these systems.

The Landlord provided an Asbestos Report dated May 26, 2023 which indicates that the rental property contains asbestos in the drywall mud and compound material. The Report outlines the risks associated with handling asbestos and the moderate to high risk precautions used during the abatement process.

The Landlord's Counsel submits that the work will take between 6 to 8 months to complete. The walls and ceilings will need to be opened up to access the electrical and plumbing systems. As such, asbestos abatement will need to be performed prior to the work taking place. The Landlord's Counsel stated that the Tenants would not be able to occupy their units during the work taking place.

The Landlord provided a plumbing report dated December 12, 2023 which states that the proposed work needs to be done concurrently as there is only one water shut off for the entire rent property.

The Tenants are of the position that the plumbing permit does not outline the scope of work, the building permit only refers to work being performed in one unit, and the electrical permit is only valid for 180 days.

The Tenants stated that work has previously been done to one unit without issues. The Tenants stated that the Landlord can phase the work to allow Tenants to vacate temporarily, before moving back in. The Tenants stated that the Landlord has not provided an accurate timeline.

The Tenants stated that the asbestos is only contained in the ceiling texture and that there is no determination made as to if the asbestos is moderate or high risk. The Tenants stated that the Landlord has done drywall work in the past without having to complete abatement. The Tenants stated that they can continue to occupy their units while the work takes place.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 49.2(1) of the Act applies and states:

49.2(1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]*, 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.

After careful consideration of all the evidence before me, I find the Landlord has provided sufficient evidence that all four parts named above from A to D have been met and that the tenancy must end as a result of the extensive work needed to update the plumbing and electrical system at the rental property.

I find that the Landlord has provided all necessary permits and approvals required by law which were obtained prior to submitting the Application. I find that the work will require the electricity and the water to be shut off while the work takes place. Furthermore, I find that the Landlord provided sufficient evidence to demonstrate the presence of asbestos, which poses a risk to Tenants. I find that the Landlord requires vacant possession of the rental unit while the work takes place.

I am satisfied that the electrical and plumbing is outdated and needs to be replaced in order to get insurance coverage, and to prolong and sustain the use of the rental property in which the building in which the rental units are located in.

I find that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement given the extent of the work begin performed. I find it reasonable that the work will take 6 to 8 months to complete given all the plumbing and electrical systems in the walls needing to be exposed and replaced. I find there is risk associated with the proposed work given the presence of asbestos, which the Landlord needs to have abated.

I do not accept that the Tenants can safely remain in the rental units while this work takes place. I find the Landlord has provided sufficient evidence to demonstrate that there is only one water shut off, which would leave the entire building without water while the plumbing is replaced.

49.2(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

- (4) An order granted under this section must have an effective date that is
- (a) not earlier than 4 months after the date the order is made,
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I grant the landlord an order of possession effective **September 30, 2024 at 1:00 p.m.**

The landlord must serve a copy of the attached Order of Possession on the tenants before the end of May 2024.

I note that the Tenants have the Right of First Refusal

If the tenancy is being ended under section 49.2 and the residential property has 5 or more rental units, the tenant is entitled to enter into a new tenancy agreement for the rental unit that takes effect once renovations or repairs are complete. The tenant must give the landlord notice that they want to be able to exercise this right by completing form #RTB-28 "Tenant Notice: Exercising Right of First Refusal".

The tenant must give the completed form to the landlord before vacating the rental unit. If the tenant gives the landlord this notice, the landlord must complete form #RTB35 "45 Day Notice of Availability" and give it and a tenancy agreement that commences on the date the rental unit will be available to the tenant at least 45 days before the renovations or repairs are finished.

If the tenant does not exercise their right of first refusal by entering into a new tenancy agreement on or before the availability date set out in the "45 Day Notice of Availability"

form, the tenant has no further rights respecting the rental unit. The landlord may then rent it to another tenant.

If the landlord fails to comply with the requirements above, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement unless there are extenuating circumstances.

Conclusion

The Landlord's application is successful.

The tenancies must end due to renovations related to updating the electrical, plumbing, and subsequent asbestos abatement required to access these systems.

The landlord has been granted an order of possession effective September 30, 2024 at 1:00 p.m. These orders must be served on the Tenants and may be enforced in 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 17, 2024

Residential Tenancy Branch