



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”). The Landlord is seeking vacant possession of the rental unit to perform renovations or repairs.

The parties listed on the covering page of this Decision appeared.

This matter commenced on May 2, 2024, and an interim decision was made on May 3, 2024, which should be read in conjunction with this Decision.

On May 2, 2024, the Landlord’s legal counsel confirmed that they have reached a settlement agreement to end the tenancy with the following rental units: 103, 105, 202, 203, 204, 206, 208, 209, 304, 401, 403. Legal Counsel for the Landlord indicated that unit 400 has vacated and unit 302 has given notice to vacate.

On June 7, 2024, the Landlord’s legal counsel and the Tenant’s legal counsel agreed that they would continue to discuss a settlement up to June 14, 2024. It was clearly identified at the hearing that the unrepresented Tenants must work with the Landlord or the Landlord’s Legal Counsel directly if they want to consider accepting the settlement offer by the date of June 14, 2024.

The hearing continued and a final decision will be made after June 14, 2024, to ensure it does not interfere with the parties attempting to settle the matter. Any settlement agreement signed by the Tenants is enforceable and any remaining Tenants who have not signed a settlement agreement will be bound by my final decision.

I also note during the adjournment period that the Tenant’s legal counsel provided the Landlord’s legal counsel with a list of questions which was discussed on May 2, 2024. A copy of the Tenants questions and the Landlords responds was submitted prior to the commencement of the continuation of this matter.

## **Issues to be Decided**

Is the Landlord entitled to vacant possession of the rental units to perform renovations or repairs?

## **Background and Evidence**

On March 19, 2024, the Landlord filed their application requesting vacant possession. The Landlord described the renovations required is the following:

Landlord requires vacant units to complete necessary plumbing work. Building has one main shut-off valve and water for all units will need to be shut off for extensive period of time to complete work. Insurers are not going to provide coverage unless they receive evidence plumbing has been updated.

The Landlord's legal counsel submits that the repairs are necessary to prolong and sustain the building as it is a three story wood frame building that was built in 1973.

The Landlord's legal counsel submits that they have the plumbing permit on page 4 of the Landlord's evidence, which was obtained on December 22, 2023. Counsel submits that the Landlord's application is made in good faith and there is no dishonest motive. Counsel submits that the Landlord has already spent a considerable time and expenses of obtain the plumbing permit, which supports the Landlord is acting in good faith. The landlord has also incurred significant expense of preparing and obtaining qualified contractors.

The Landlord's legal counsel submits page 20 of their evidence is a letter from Mechanical Engineering Consulting that outlines the scope of the work that is covered by the permit obtained which requires vacant possession of all units.

The letter from Mechanical Engineering Consulting reads as follows:

We have been hired by the owner of the property located at 519 Sturdee Street, Esquimalt, B.C. to assist with mechanical engineering services. The project is to replace the existing domestic water lines serving the residential suites, replace all existing plumbing fixtures, and add in-suite laundry for most suites where possible. The existing piping is the original copper piping, and they have exceeded their life expectancy. The typical life expectancy for copper domestic water piping is between 20-25 years, and the project's domestic water piping age has exceeded this time. Therefore, it's recommended to replace the existing domestic water lines in a timely manner before leaks start to appear, and further damage to the building drywalls could happen due to the age of the domestic water copper piping in the building.

Due to the nature of the re-designing of the entire domestic water system and the method of delivery of the domestic hot water, no washrooms or kitchens can be used during the piping and plumbing fixtures replacement that will take place in the building. The cold and hot water main piping distribution systems will be running in the suites ceiling since the building has no common heated corridors.

This project is beyond the re-piping retrofit, as it included the plumbing fixtures replacement, as well as adding in suite laundry for most of the units. A project of this nature of renovation requires many areas in units' floors, walls to be opened as a result, that will affect the purpose of maintaining the integrity of the fire separation for a while in the building during the construction. It is reasonably expected the building will be vacant during the renovation.

The Landlord's legal counsel submits that the Landlord has a statutory obligation under the Act to maintain and repair the building. The Landlord is completing the renovation and repairs to the plumbing system to comply with their obligations under the Act and to ensure their property insurance is not cancelled.

The Landlord's legal counsel stated that Policy Guideline 2b states that any period of time that rental unit must be vacant meets that statutory requirement, which is the case in this matter.

The Landlord's legal counsel referred to Page 8 and 9, a letter from BC Building, dated January 12, 2024, and in their professional opinion the work cannot be done while tenants occupy the building.

The letter from BC Building reads in part,

The subsequent information is an impartial and comprehensive review of the repairs required at 519 Sturdee Street and the related implications to existing tenants.

This determination is based on the Architect and Engineers assessment and specifications required to ensure the buildings longevity and provide safe living spaces for tenants. Upon an extensive review of the Architectural Building Permit plans, Structural Engineering plans, Electrical Engineering plans, Mechanical Engineering Plans, including an on-site review of the existing conditions at the above noted address; it is our professional opinion that the repair work required cannot be carried out while the building is occupied by tenants.

It is not feasible to safely undertake the required repairs to any occupied suite as it would pose an unacceptable level of risk to a tenants' life safety, health, and personal hygiene. The existing Common Area and Stairwells require a full replacement as they do not meet current Building Code requirements and are exhibiting visible deterioration (rot). The interior and exterior repairs required are extensive and will undermine the safe separation between suites, between suites and common areas, as well as compromising that a safe operation of egress is met, posing yet another life safety risk.

The ensuing outline illustrates the immediate and foreseeable core negative impacts to tenants. Please note this outline is not an exhaustive accounting, rather a typical representation of the primary types of implications and variations on these main themes should be anticipated throughout the overall process.

The Landlord's legal counsel submits the BURo47 architecture inc, has provided a letter that further confirms vacant possession is needed.

The Letter for the architecture company in part reads,

1. Suite updates involve total removal and replacement of all bathroom fixtures. All suites have only a single bathroom and is not reasonable to believe that a tenant could continue to live in a suite without bathroom facilities.
2. Suite updates involve the total removal and replacement of all kitchen millwork and equipment. It is not reasonable to believe that a tenant could continue to live in a suite without kitchen facilities.
3. In some cases, the suite work will involve cutting power to the suites for an extended period of time.
4. As in suite wall finishes and millwork is replaced, it is likely that required fire separation ratings will be compromised at walls separating the suite from other units and/or the corridor.
5. As flooring finishes are replaced and in-floor plumbing is updated, it is likely that sections of the floor sheathing will need to be temporarily removed. This would create a dangerous condition for tenants.
6. When the domestic water piping is being replaced, many required fire separations will be temporarily compromised when walls and ceilings are opened. This creates a hazard to tenants that has no practical work-around. As a secondary consideration that may go without saying, while electrical wiring upgrades are being made, it is likely that water will be shut off to units for extended periods of time.

The letter further reads,

As discussed in the introductory section of this letter, it is our opinion that the potential negative impacts on tenants during the proposed renovation are not acceptable and the building must therefore be at least partly (surrounding work areas) throughout the renovation. Our recommendation would be to fully vacate the premises at the outset, in order to allow work to proceed safely and efficiently.

The Landlord's legal counsel submits it is unreasonable to believe that a tenant can live in the rental unit with no bathroom, no kitchen and when the ceilings and floors need to be opened to accommodate the renovation and repairs for the design of the new water


delivery system and the new heating system and when the walls, ceiling and flooring are opened, and this will also compromise the fire separation walls. This is a hazard and there is no practical workaround.

The Landlord's legal counsel submits a letter from On Demand Plumbing, which reads as follows.

**As per our approved Plumbing Permit (PL002393); the complete Scope of Work includes the following repairs and upgrades, as specified by the Mechanical Engineer, to ensure the current BC Building Code and BC Plumbing Code regulations have been met or exceeded.**

- **Re & re: Bathroom Fixtures: tub/showers, toilets, sinks and taps (to meet "low-flow" BCPC specifications).**
- **Re & re: Kitchen Fixtures: sinks and taps (to meet "low-flow" BCPC specifications).**
- **The building currently has 1 main shut-off for the entire building. Current BCPC requires that individual water shut-offs be installed in each unit.**
- **Poly-B water supply lines were observed in numerous areas. These do not meet BCPC and prohibit both the building owner and tenants from obtaining any insurance.**
- **Re & re: all existing copper and poly-b waterlines throughout the entire building as they are also undersized by current Code requirements. The new engineered system also requires a recirculating hot water line that loops the entire building.**
- **Vent stacks and lateral drainage lines are all original cast iron. Numerous toilet flanges are visibly deteriorated and rotting the flooring/sub-structure. New bath and kitchen fixtures to be installed will require extensive repairs on the existing cast iron sewer drains.**

**All work is required to be installed, tested, inspected and approved prior to being drywalled over and in service to allow the Township of Esquimalt to issue Final Occupancy Approval.**



**Legal Counsel for the Landlord submits that before the plumbing can be repaired and renovated that there has to be a significant asbestos abatement of the entire building, as it cannot be safely done while occupied.**

**The letter dated April 9, 2024, reads in part.**

After reviewing the Hazardous Materials Investigation of 519 Sturdee Street, Victoria dated March 2024 it was determined that sheet vinyl flooring, drywall joint compound(ceilings), texture coat (walls and ceiling) contains asbestos in materials that are being remediated. Asbestos is a highly dangerous fibre that affects the lungs when inhaled. Western trades Inc has been hired to handle and remove it in a safe manner as per Work Safe BC regulations and guidelines. Western trades recommends that no other work is to be conducted before it has cleared the suites of asbestos and issues a completion letter.

At 519 Sturdee Street, Victoria, it is assumed that both moderate and high risk procedures will need to be followed for the scope of renovation work. It is strongly recommended that units stay vacant until full Asbestos abatement is completed and clearance letters are issued.

The Landlord's Legal counsel stated that the scope of the work would take over one year.

The Tenant's Legal counsel say the largest issue the Tenants have that it appears that the Residential Tenancy Policy Guideline 2 (b) has been updated in May 2024, between the first hearing and today, and the guideline now specifies that if the renovation or repairs can be made within 45 days or less then the tenancy agreement should not end and it is the Landlord's burden to prove that each individual unit would exceed this period of time to end the tenancy and there is just no sufficient evidence.

Legal Counsel for the Tenants submits that there is one main waterline that goes into the entire building and the Landlord has not provided any evidence of how long the water would have to be turned for the entire building. The reports show the waterline needs to be replaced The Tenants do not disagree that the plumbing work has to be done.

Legal Counsel for the Tenants submits that electrical work is planned to be done which a permit for the electrical work is still under review, which the Tenants do not dispute that the work needs to be done; however, the lack of details does not support that the work cannot be done to each individual unit.

Legal Counsel for the Tenants submits that asbestos does not necessarily mean an automatic end to tenancy because each rental unit could be done individually, and only



temporary vacancy would be needed. Counsel submit that there is no evidence that the asbestos material is going to be impacted or disturbed. I note counsel was primarily referring to the flooring material.

Legal Counsel for the Tenants submits that the Tenants know that they will have to vacate while the bulk of the work is done, but they do not have the factual information on how long it would take to complete the work, if the work was done individually to each rental unit. Counsel submits that the Tenants could temporarily find a short term rental or make arrangement to stay with family or friends.

Legal Counsel for the Tenants stated that there is no evidence that would suggest the work cannot be done when completing the rental units individually within 45 days, which the Policy Guideline has just be changed, and the Tenant could relocate on a temporary basis.

Legal Counsel for the Landlord stated that all permits they have obtained are for the purpose of the plumbing work. In order for the work to be done all the asbestos needs to be removed for the entire building as is not just the individual units and they cannot allow even the workers in until it is remediated, tested and inspected and final approval has been given. Counsel submits that their application was filed because they need vacant possession in order to have the scope of the plumbing work complete.

The Landlord's legal counsel submitted the contractors doing the work and the heavy lifting have said that they need vacate possession.

The Landlord's legal counsel stated that the work will take more than 45 days just on the scope of the work and an occupancy permit will not permit anyone to live in the building until 99 percent of the work is completed and signed off by the authorities.

The Landlord's agent submits that all the work needs to be done before the engineer, architect, and the city inspector will allow occupancy because you cannot have open beams, and compromised fire separations.

The Landlord's agent submits that the mechanical engineer has designed a plumbing system to meet current code, and this includes a hot water recirculating system that the water lines loop throughout the entire building. In order to do that work all the units' walls need to open, which will be expected to take 3 to 6 weeks, and once the walls are open any unforeseen issues will have to be rectified, which would be about 6 to 10 weeks.



The Landlord's agent submits after the above work is done, then they will install frames and drops to install the new recirculating lines and the risers into the units which will take about 3 to 6 weeks and then it has to be tested and inspected which would be about one week; and any deficiency would delay that further. The agent submits that after the system has its final approval, then they have to engage a fire company to ensure that the fire penetrations walls between the units are fixed which can take 4 to 6 weeks, then the hot water lines would have to be insulated and inspected before they can restore the rental units.

The Tenant I.K. states that renovation they can understand from some point. But when it comes to putting people out of their homes that have been there for many years is unfair. I.K. states people are not at their disposal and should not be treated that way and this is just not right to be able to kick people out of their homes and is a very dangerous and difficult situation.

The Tenant L. B. states that there are lots of buildings of the same age that are in a similar situation, and they are still upright and not being torn down. I.C. stated that they have seen individual units being treated when removing asbestos and there are things they can do.

## **Analysis**

Section 49.2(1) 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 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.

If an arbitrator is satisfied that all of these criteria are met, then they must grant an order ending the tenancy and issue an order of possession. Such an order must not end the tenancy earlier than 4 months after the date it was made

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant; they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32 (1) of the RTA).

Residential Tenancy Branch Policy Guideline 2B Ending a Tenancy to Demolish, Renovate, or Convert the Unit to a Permitted Use provides information regarding permits. (PG)

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application. The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made.

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change.

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. Where the vacancy required is for an **extended period of time**, then, **according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.**

On the other hand, in *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs **if a very brief period of vacancy** was required and the tenant was willing to move out for the duration of the renovations or repairs.

The PG further reads and was updated on May 16, 2024, 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 this case, the Landlord's application was filed seeking vacant possession for the replacement of the water pipes, related fixtures and to install a newly design water delivery system and recirculating hot water lines. The Landlord has provided the permit for the work necessary and expects the work to be completed in approximately one year.

I am satisfied the landlord intends in good faith with no ulterior motive to renovate or repair the plumbing as this was not disputed and in fact it was agreed the work is necessary. Further, the Landlord provided many professional reports, and repair is a condition for their insurance policy.

I am further satisfied that the renovations or repairs are necessary to prolong or sustain the building in which the rental units are located as the water pipes are well past their useful life span. I am satisfied that the Landlord has established section 49.1 (1) (a) and (c) of the Act.

In this case, this is not a case of simply re-piping the existing water lines, which often can be done while the building is occupied. This is a major alteration to install a newly designed delivery of water and for the installation of recirculation hot water lines that loop throughout the building, which run through walls, ceiling, and floors which during this time the fire separation of the building will be breached.

The asbestos has to be removed from the entire building to accommodate the project, this includes all common areas before the work can commence, which I find is reasonable because workers and occupants cannot be in the building while this takes place and even if the Landlord could do this unit by unit, there is still the issue of asbestos removal in the common areas and the breach of the fire separation walls between the rental units.

Further, the rental units would not be given occupancy as this is an entire building issue and not isolated to an individual rental unit and again the fire separation walls have been breached.

Furthermore, once the asbestos has been removed and there is no longer a safety issue, then ceilings, walls, and floor will have to be opened up to accommodate the new water delivery system and recirculating hot water lines, which that system will have to be fully installed, inspected and approved, before any of the other work can be done.

While the Tenant's counsel argues that there is no evidence that the project cannot be completed individually, unit by unit, and the work completed within 45 days; however, the policy guideline is simply using the same time frame as the rights of first refusal and not based on the BCCA or the BCSC decision referred to above or the Act.

In *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165, the decision refers to an extended period of time. In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 found that a short duration, which was based on a 3 day project which I agree was unreasonable to end a tenancy.

Based on the above, I find it is reasonable based on the basic timelines given that this is not simply replacing the existing water lines, this is a redesign. The asbestos has to be removed, and installing the recirculation hot water lines have to be looped throughout the entire building which would mean the lines have to be installed to the entire project for it to be tested, inspected and approved. Then the pipes would have to be insulated, and any fire separation walls breached would have to be repaired before occupancy and then the individual units would then have to be restored. I find this work necessary would not be done over a short duration and would require an extended period of time to be completed, which was approximately one year. I find it reasonable, based on the scope of the work, that vacant possession is required. Therefore, I am satisfied that the Landlord has established section 49.1 (1) (b) and (d) of the Act.

While the Tenant's legal counsel raised other repairs that have not received permits, such as electrical work; however, even if I accept that is true this application was made based on vacant possession due to the plumbing work, which I have found vacant possession is needed.

While I accept this is difficult for the Tenants as this Decision will have a significant impact on them personally; however, the Landlord has the rights and obligations under the Act to make repairs or renovations that will prolong and sustain the building.

Based on the above, I find the Landlord is entitled to an order of possession, effective on **November 30, 2024 at 1:00 pm**. A copy of this Order must be served to the Tenants.

## **Conclusion**

The Landlord's application is granted. The Landlord is granted an Order of Possession effective November 30, 2024.

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: July 4, 2024

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Residential Tenancy Branch