Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Code PFR

Introduction

The hearing was convened following applications for dispute resolution (Applications) from the Landlord under the *Residential Tenancy Act* (the Act), which were joined to be heard simultaneously.

In their Applications, the Landlord seeks an end to tenancy and an Order of Possession for renovations or repairs under section 49.2 of the Act in respect of two units within a residential property

The Applicant Landlord and all three Respondent Tenants listed on the Applications attended the hearing.

Service of Notice of Dispute Resolution Proceeding and Evidence

As both parties were present, service was confirmed at the hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Package (the Materials). Based on their testimonies, I find that the Tenants were served with the Materials as required under section and 89 of the Act.

The Landlord submitted two pages of evidence to the Residential Tenancy Branch consisting of a page of brief notes outlining their plans, and what appeared to be a page printed from an unnamed municipality relating to building permits. The Landlord testified they served the Tenants with these documents with the Materials, though all of the Tenants testified they did not receive them, but confirmed they were aware of the Landlord's plans and that permits were not needed.

Based on the above, I find the Landlord's evidence was not served to the Tenants in accordance with section 88 of the Act and as required by Rule 3.14 of the *Rules of Procedure*, as such it was excluded from consideration. I find the Landlord's evidence amounts to written submissions which could be replicated during the hearing with little prejudice to either party, so an adjournment to re-serve the documents was not required.

Tenant NL submitted an audio recording into evidence but confirmed it had not been served to the Landlord. Given this, the recording was excluded from consideration on the grounds of procedural fairness.

Issue to be Decided

- Is the Landlord entitled to an end to tenancy and an Order of Possession for renovations or repairs?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following:

- The residential property is a wooden house built in 1917 with three levels containing a separate unit on each level.
- The Landlord occupies the unit on the main level, Tenants GB and LB occupy a rental unit on the lower level (the Lower Unit), and Tenant NL occupies a rental unit on the upper level (the Upper Unit).
- GB and LB have occupied the Lower Unit since March 2021 paying rent of $1,600.00 per month, and NL has occupied the Upper Unit since December 2021 paying rent of $1,900.00 per month.

The Landlord testified as follows. They seek an end to the tenancies and Orders of Possession so they can carry out repairs to the roof of the residential property, as well as replacing the flooring of both the Lower Unit and the Upper Unit (collectively, the Units), and painting the interior walls of the Units. This work will require the Units to be vacant. None of the work requires permits or other type of approval.

The roof was last replaced in or around 1995 and has started leaking. It will take four to five days to replace the roof, and the work will not affect the Lower Unit. The Landlord is unsure if the Upper Unit needs to be vacant in order to accommodate the work, as this would be dependent on if insulation and drywall needs replacing.

The flooring in the Upper Unit has not been renovated for a long time and is original. Some areas are weak and have been patched, and the Landlord indicated they would prefer consistency and a more solid floor.

The Landlord intends on doing the work themselves and that it would take “a few months” to replace the flooring in the Upper Unit, which is 1,000 square feet in size. Cabinets will need to be removed, the walls painted, then a sub-floor installed, which will take two and a half months to complete.

In the Lower Unit, there is a raised floor which the Landlord intends to remove to allow more space, and consistency in the flooring. The carpet and underlay are deteriorated, require replacement, and vary between rooms, so also require a cosmetic update.

The Landlord intends to do the work in the Lower Unit themselves, which will again entail removing the cabinets and flooring, sanding and painting the walls and re-installing the flooring.

As the counters and sinks in the Units will be removed, the water will need to be shut off. The Landlord was unable to provide a specific length of time the water would be shut off for, saying it was dependent on how long the cabinets took to arrive, which could be “months”.

Tenant GB testified as follows. Roofs are routinely replaced in buildings without the need for eviction and they do not believe an end to tenancy is needed to replace the roof in this case.

The raised flooring in the Lower Unit is only in the living room, so if this is to be removed, they can move items to another room while the work is carried out.

They questioned why water would need to be shut off for a significant amount of time and argued cabinets could be pre-made and installed, so the water would not need to be shut off for long. Further, they believe a replacement toilet and sink in a bathroom, for example, could be done with water being restricted for only half a day.

GB argued the issue of painting was cosmetic and not the type of work requiring an end to tenancy, per Policy Guideline 2B.

Tenant NL testified that the residential property is “decrepit” and that they have raised the need for repairs with the Landlord before. The flooring in the Upper Unit has holes and gaps which means sounds and odours come through from the Landlord’s residence, though NL disputed the notion the repairs require vacancy. They agreed the roof needed repairing, and had notified the Landlord they were out of province and the Upper Unit was currently empty, should this be required for the work to be completed.

NL argued that the Landlord “compressing” all the jobs into one project was not the correct thing to do and they could be done in phases without their tenancy being ended.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim who in this case, is the Landlord.

Section 49.2 of the Act allows a landlord to seek an end to tenancy and an Order of Possession if all of the following apply:

- 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;
- The renovations or repairs require the rental unit to be vacant;
- 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; and
- The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

If a landlord is able to prove on a balance of probabilities that all four of the circumstances outlined above apply, an arbitrator must issue an order ending the tenancy, effective not earlier than four months after the order is made, per section 49.2(4) of the Act.

The Landlord seeks an end to tenancy and an Order of Possession for renovations or repairs, specifically to the roof of the residential property, the flooring, cabinets and

interior paintwork of the Units, as well as potential work needed to the drywall and insulation within the residential property. I will address each of the four circumstances in turn in relation to the proposed renovations and repairs on which the Application is based.

Permits

The Landlord testified the proposed work did not require permits from the municipality. The Tenants did not dispute this notion and agreed that no permits were needed. Considering the scope of the work does not appear to involve changing the purpose of the residential property or to be drastic in nature, I find on a balance of probabilities that no permits are required, and the Landlord has established the circumstances set out in section 49.2(1)(a) of the Act apply.

Vacancy Required

As set out in Policy Guideline 2B - *Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*, while any period of time in which the unit must be vacant may be sufficient to meet this requirement, as discussed below, the landlord must also prove that the only reasonable way to achieve the necessary vacancy is by ending the tenancy agreement.

Two BC Supreme Court decisions are also discussed in the Policy Guideline as follows:

- *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257 (Berry), where it was found that “vacant” means “empty”. Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.
- *Allman v. Amacon Property Management Services Inc.,* 2006 BCSC 725 (Allman), where it was found that a landlord cannot end a tenancy to renovate or repair a rental unit just because it would be faster, more cost-effective, or easier to have the unit empty. Rather, it is whether the “nature and extent” of the renovations or repairs require the rental unit to be vacant.

Renovations or repairs that require the rental unit to be vacant could include those that will:

- Make it unsafe for the tenants to live in the unit (e.g., the work requires extensive asbestos remediation); or

- Result in the prolonged loss of a service or facility that is essential to the unit being habitable (e.g., the electrical service to the rental unit must be severed for several weeks).

Renovations or repairs that result in temporary or intermittent loss of an essential service or facility or disruption of quiet enjoyment do not usually require the rental unit to be vacant. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time.

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- Replacing light fixtures, switches, receptacles, or baseboard heaters.
- Painting walls, replacing doors, or replacing baseboards.
- Replacing carpets and flooring.
- Replacing taps, faucets, sinks, toilets, or bathtubs.
- Replacing backsplashes, cabinets, or vanities.

Per the Landlord's testimony, the work on the roof *may* require vacancy of the Upper Unit, but only for a short period, if work on the insulation and drywall are needed. No inspection reports, quotes or other evidence to support the notion drywall and insulation would require work was submitted into evidence. I find the submissions from the Landlord vague and do not prove on a balance of probabilities vacancy of either of the Units of any kind is required in order for work on the roof to be carried out.

I found the Landlord's assertion that the replacement of the flooring and cabinets within the Units, as well as the painting of the interior walls would require the Units to be vacant for "months" and require water being shut of for an extended period of time to be uncorroborated by evidence and to be implausible, given the Upper Unit was confirmed to be relatively modest in size at 1,000 square feet.

The Landlord testified they would be carrying the work out themselves and whilst it may be preferable for the Units to be empty when painting, fitting the floors and reinstalling cabinets, I find this falls within a scenario whereby it would be easier for the Landlord to have Units vacant. Given the work to the flooring, painting and cabinets appear to fall

under cosmetic work. Applying Allman, I am not satisfied on a balance of probabilities that this work requires the Units to be vacant.

Further, applying Berry, where it was set out that “vacant” means “empty”, based on the Landlord’s testimony, I am not satisfied the work requires the Units to be empty. Again, though this may be preferable to the Landlord, considering the evidence before me, the nature and scope of the work does not appear to pose a significant enough disruption to the Tenants to warren the rental units being empty.

Based on the above, I find the Landlord has failed to establish the circumstances set out in section 49.2(1)(b) of the Act apply in this case and that the renovations or repairs require the Units to be vacant.

Renovations or Repairs are Necessary

Per section 49.2(1)(c) of the Act, the renovations or repairs must be necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located. As set out in Policy Guideline 2B, exampled of necessary renovations include:

- Undertaking seismic upgrades;
- Updating electric wiring to code; and
- Installing or replacing a sprinkler system to ensure the building meets codes related to fire safety.

Based on the evidence before me, I find on a balance of probabilities that the repairs to the flooring, interior paintwork and cabinets are cosmetic in nature and whilst it may be preferable to both the Landlord and the Tenants that the work be carried out, they are not necessary in prolonging or sustaining the use of the Units, or the residential property as a whole.

The Landlord’s testimony that the roof was leaking and required replacement was undisputed by the Tenants. It was also undisputed that the roof was installed in 1995. Given this, I find it more likely than not that the roof has reached the end of its useful life and that there is a risk of water ingress due to the age of the roof.

Given the above, I find the Landlord has established the circumstances set out in section 49.2(1)(c) of the Act apply in respect of the roof, but none of the other renovations or repairs.

Whether the Tenancy Must End

Per Policy Guideline 2B, the onus is on the Landlord to provide evidence that the planned work reasonably requires the tenancy to 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.

As noted previously in this Decision, I do not find the scope of the work proposed by the Landlord requires the Units to be vacant at all, let alone for a period of over 45 days. There is therefore no requirement to end the tenancies.

Summary

The Landlord has failed to establish that all circumstances provided in section 49.2(1) of the Act apply to the proposed renovations or repairs. Therefore, the Landlord's Applications are dismissed without leave to reapply. The tenancies continue until ended in accordance with the Act.

Conclusion

The Landlord's Applications are dismissed without leave to reapply.

The tenancies continue until ended in accordance with the Act.

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: July 10, 2024

Residential Tenancy Branch