



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the Landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit to perform renovations or repairs that require vacant possession.

The Landlord's agent/spouse, the Tenant, and the Tenant's son/representative attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

The Tenant, through their representative, OL, confirmed receiving the Landlord's application for dispute resolution, but then said they did not receive all the evidence. OL was asked what specific evidence they received, and after the individual listing, it appeared the Tenant received all the evidence of the Landlord. I find the Tenant was sufficiently served with the Landlord's entire proceeding package.

No evidence was filed by the Tenant.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession of the rental unit?

Background and Evidence

The tenancy began on January 1, 2008, and current monthly rent is \$3050.

The rental unit is a single home, with the Tenant living on the main floor. I heard testimony that the Tenant uses two separate suites on the lower level, for use by their family members.

In their application, the Landlord described their claim as follows:

Scope of WWOP work to be permitted: 1) Construction work on unfinished main floor and 1 Bd.Rm Secondary Suite legalization As per the permit, framing, sheathing, underslab, insulation, electrical, and plumbing work will need to be completed. Our contractor has informed us that essential systems such as electrical and plumbing will need to be shutdown. Further, there will be dangerous particles because of the extent of work involved.

The Landlord, through their agent/legal counsel, said that they received a letter from the City of Vancouver on September 1, 2021, reporting that following an inspection, unauthorized work on the home was determined. The unauthorized work included a carport being enclosed to create an unauthorized garage, three rooms were constructed in the unauthorized garage to convert the space into living space, a wall being constructed in front of the garage door, and unauthorized alterations carried out on the ground floor, including three bedrooms, two bathrooms, and two kitchen/eating areas.

The letter went on further to require the Landlord to obtain the required construction permits to remove all work carried out without permit and either obtain the required permits for approved alterations or restore the building and carport to their approved conditions on record. The Landlord said they believe the Tenant made the alterations, and that the City determined the alterations had to be remedied. The letter also cited that electrical, plumbing and gas installations will require trades permits which will only be issued to licensed contractors, who will apply for the permits.

The Landlord said there were already three suites in the home and believes that the Tenant has sub-let the suites in the basement, or ground, floor. The Landlord said that the scope of work includes having the ground floor re-worked to remove one of the suites, and that there is extensive work that is required.

The Landlord confirmed that the work on the ground floor is the primary issue in this dispute.

The Landlord submitted said that the contractor will be shutting down the electrical and plumbing and will require the home be vacant, for up to 4-6 months. Filed in evidence is the contractor's letter and building permit. The letter from the contractor describes the scope of work to be done and the extent of the work will not be done until the walls are opened up, according to the Landlord; however, the work will be done downstairs.

Tenant's response

The Tenant, through their son/representative, OL, testified that the only work that was done was to the downstairs, and that the Landlord originally asked them to take over the ground floor. Currently there are two families living downstairs, including their sister with a young baby. OL testified that in terms of the garage, the garage door never worked, so they asked the Landlord to install flooring, which is the reason renos were done inside, but not out. OL said it was a neighbour who reported them to the City.

Regarding the downstairs, OL said that the previous owners altered the downstairs and no work was done upstairs. OL said they talked to staff working for the City and they were told the Development and Building Permit issued on August 15, 2023, would be expired, as building permits last only six months. OL said that information is also found on the City's website. OL said the staff member also said they were not in the business to make people homeless and that the City only wanted the Landlord to validate the suite.

OL said some of the emails filed by the Landlord were undated and that there was only a 1-liner that said, yes, the work had to be done.

OL said they have a very good relationship with the Landlord and knows this has been a nightmare for them; however, they believe the Landlord can just make the ground floor compliant without having to evict them.

In rebuttal, the Landlord submitted that their evidence shows the letter from September 1, 2021, was still valid, but there was a lot of work to be done to this point, such as an inspection and work with engineers and architects. The Landlord argued that the whole home had to be vacant for 4-6 months as the walls have to be opened and their contractor said there will be asbestos in the walls. The Landlord said that the contractor and city official said the home will need to be vacant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Section 49.2 (1) applies and states a landlord may apply for an order of possession if **all** of the following apply:

1. 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;
2. the renovations or repairs require the rental unit to be vacant;
3. 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;
4. the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Tenancy Policy Guideline 2B (D) provides the following information:

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.

Guideline 2B provides further information as follows:

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.

I have reviewed all the evidence filed by the Landlord and find that they submitted insufficient evidence to support all of the requirements under section 49.2 (1).

The scope of work listed in the Development Permit covered construction work on an unfinished main floor, legalization of a 1 bedroom secondary suite, and conversion of the carport to garage.

At the hearing, the Landlord confirmed that the work to be done in the home was on the ground level only. For this reason, I find the Landlord submitted insufficient evidence to show why the Tenant could not continue to occupy the upper portion of the home during the work. While a one line email from a City official, dated March 1, 2024, stated the home will need to be vacant during construction, I find this short, abbreviated line provided no context as to what construction to which they referred or support for this statement. For instance, it was unexplained why the home would need to be vacant for work on the garage, and the building permit itself does not state the home required vacant possession.

I accept that the general contractor said "*there will be 100% ASBESTOS*" with this construction, but there is no separate hazardous materials assessment report to support this broad, unsubstantiated statement. I also find the contractor provided insufficient proof of their estimated time of 4-6 months, as the contractor said the scope of work can only be determined when the house is vacant. I also note that although the contractor spoke of plumbing and electrical work that would be required, the letter of September 1, 2021, from the City stated that electrical and plumbing work will require trades permits to licensed contractors. I note that the general contractor did not refer to being a licensed contractor that could perform electrical or plumbing work and there was no evidence of a trades permit being issued.

I therefore find the Landlord submitted insufficient evidence to establish steps 1 or 2 as noted above.

I further find the Landlord submitted insufficient evidence to establish step 3. The Landlord said that the work relating to this application was to legalize the suite in the ground level, which I find did not relate to prolonging or sustaining the use of the rental.

As to step 4, I find the Landlord submitted insufficient evidence to establish step 4, as the Tenant could very well live in the main portion of the home during this work, as they offered to do.

For the reasons noted, after addressing all the required elements under Section 49.2 (1) of the Act and finding the Landlord submitted insufficient evidence of each of the steps, I dismiss the Landlord's application, without leave to reapply.

Conclusion

The Landlord's application is dismissed, without leave to reapply, due to insufficient evidence.

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 29, 2024

Residential Tenancy Branch