

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") dated July 26, 2024, seeking vacant possession of the rental unit to perform renovations or repairs.

The Landlord's counsel S.D. and the Landlord's agent A.R. attend the hearing for the Landlord.

Tenant R.L., Tenant C.B.2., Tenant C.B. and Tenant M.L. attended the hearing for the Tenants and indicated they would like to speak during the hearing.

Issue 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?

Service of Notice of Dispute Resolution Proceeding and Evidence (collectively, the Proceeding Package)

The Landlord's Counsel advised that they served the Proceeding Package on all the Tenants via registered mail and provided Canada Post tracking numbers. Additionally, the Landlord's Counsel advised that an additional evidence package was placed in the Tenants' mailbox. I find that the Tenants were served by registered mail and by attaching a copy to a door or other conspicuous place in accordance with section 89(1) of the Act, the fifth day after the registered mailing and the third day after being left in the mailbox. The several tracking numbers I checked showed the Proceeding Package was delivered and a signature of the recipient was provided. Tenant R.L., Tenant C.B. and Tenant M.L. all confirmed they received the Proceeding Package.

Tenant C.B.2. argued that only their co-tenant R.L. received the packages and that in a recent hearing Tenant C.B.2. was deemed a tenant. Tenant C.B.2. was able to attend the hearing, provided testimony and submitted evidence through Tenant R.L. in response to this application. As such, I find that there would be minimal prejudice to

Tenant C.B.2. in proceeding with the hearing despite a separate Proceeding Package not being served on them. As such, I find there is little prejudice to Tenant C.B.2. or any breaches in the principles of natural justice and use the discretion afforded to me under section 71(2)(b) of the Act to find that the Proceeding Package was sufficiently served on the Tenant C.B.2.

The Landlord advised that evidence from Tenant C.B. and Tenant R.L. was received.

Preliminary Issue

- Amend Application to Include Tenant C.B.2.

Application was amended to include Tenant C.B.2.

Background and Evidence

The application involves 3 buildings owned by the Landlord on the same property. The Landlord purchased the buildings in April 2024. The buildings were built in 1974, and the Landlord's Counsel advised much of the building components are past their useful life and the Landlord is not aware if the previous owner did any major renovations.

The Landlord's Counsel advised the Landlord has obtained the necessary permits to complete the renovations on the buildings, including plumbing and electrical permits. Copies of the permits were uploaded as evidence. The Landlord uploaded a letter from the general contractor which provides an overview of the scope of work on the buildings. The scope of work includes replacing building material at the end of their life cycle, asbestos removal and addressing water ingress to the building envelope. The work is expected to take 6-8 months to complete.

The Landlord's Counsel advised that the Landlord has engaged qualified professionals including a company for asbestos remediation, plumbing and electrical companies. A letter from the plumber provides that the plumbing work will take 2-3 months, and all water will remain shut off to the units until draining is replaced and tested. Additionally, the letter from the general contractor states that the rental units must be unoccupied as all systems in place to keep occupants safe and separated will be removed and all infrastructure to the units will be shut off. The Landlord also argued that asbestos testing was done on 2 of the buildings and asbestos was found. The Landlord's Counsel advised asbestos removal will take place on the buildings. The asbestos test results were provided as evidence. The Landlord also provided communication with the City Building Official Plans Examiner where it was confirmed that the rental units could not be occupied until the city grants an occupancy permit.

The Landlord argued that the renovations are necessary to prolog and sustain the use of the rental units. The Landlord provided a letter from an insurance company which advised that insurance companies would not provide any insurance for the buildings until the aluminum wiring in the buildings were replaced with copper wiring. The letter from the electrician also recommended all aluminum wiring be replaced with copper wiring. Additionally, the Landlord provided a building inspection report from December 2023 which stated that the cooper piping has “reached an age where pinholes type leaks may develop, and replacement might be necessary at any time”. The report also stated that the buildings had polybutylene pipes which have a high rate of failure and are recommended to be replaced.

Tenant R.L. and Tenant C.B.2. argued that in 2022 the previous landlord made repairs to their rental unit including asbestos removal and pluming and electrical work. The position of Tenant R.L. and Tenant C.B.2. is that their rental unit does not need these repairs. In response the Landlord’s Counsel argued this work can be distinguished from the work in 2022 as this work is much more substantial and involves replacing all plumbing and electrical and the Landlord cannot guarantee the work was done to existing code in 2022.

Tenant C.B. argued that the electrical in their units is working much better after some temporary work was done. The Landlord’s Counsel argued that this work was a band aid solution and does not address the fact that the components are past their useful life.

The Tenants also argued that the asbestos documents have the wrong address and written-in changes were made to the addresses on the reports. The response from the Landlord’s Counsel was that this was an error, but testing was done on 2 of the 3 buildings and they came back positive for asbestos.

The Tenants also argued that the fact that the Landlord got a stop order from the city for improper asbestos removal supports an argument that the Landlord is not acting in good faith. Tenant C.B. argued that the Landlord was previously fined by the Compliance and Enforcement Unit (the CEU); however, no evidence was provided to support this.

Analysis

The Act section 49.2(1) provides that a Landlord may make an application for dispute resolution requesting an order to end a tenancy, and an order granting a Landlord possession of a 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) Good Faith and Permits

According to *Residential Tenancy Branch Policy Guideline 2B (Policy 2B)*, permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit, and required permits must have been valid at the time the application to end the tenancy was made.

The Landlord has provided the necessary electrical and plumbing permits. As such, I am satisfied the Landlord has the necessary permits and approvals required by law to carry out the proposed work.

I find that the stop order issued by the city does not support a finding of bad faith. The Landlord has provided sufficient evidence to demonstrate they intend to carry out renovations and repairs to the buildings. There are letters from the general contractor, electrical company, plumbing company and asbestos removal company to support the Landlord has engaged qualified professionals to undertake this work. The Tenants also argued the Landlord was previously fined by the CEU; however, the Tenants provided no evidence to support that any fine was given or that a fine was given in relation to bad faith evictions. As such, I find that this claim is unsubstantiated.

Based on the above, I find that the Landlord has demonstrated a good faith intention to carry out the repairs and renovations and the Landlord has the necessary permits.

(b) Vacancy required

According to Policy 2B, In *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, the BC Supreme Court 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).

Based on the testimony of the Landlord's Agent and the evidence, I find that the Landlord has provided sufficient evidence to support that the rental units require vacant possession to perform the scope of work. Given the removal of structures to keep occupants separated and safe, asbestos removal, the wiring and plumbing that is set to occur, I find that the work requires vacancy. Additionally, the letter from the general contractor, the plumbing company and email from the city support that vacancy is required and services will be shut off. Therefore, I find the renovations and repairs intended by the Landlord will require the rental units to be vacant.

I take no issue with the fact that the asbestos reports cite an incorrect address. I accept the explanation by the Landlord's Counsel that it was an error. There is no evidence to support the test was fabricated and considering the Landlord does not own the incorrect building address on the report, the logical explanation is that it was incorrectly noted down. Furthermore, the scope of work outside of the asbestos removal, would still require the rental units to be vacant.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord would prolong or sustain the use of the rental units and that many of the building components are past their useful life. I find the work proposed by the Landlord includes necessary upgrades to the electrical and plumbing, all of which prolong and sustain the use of the rental property. The letter from the electrical company, the insurance company and the building inspection report recommended all aluminum wiring be changed to copper. Furthermore, the building inspection report stated that the "original copper piping has reached an age where pinhole leaks may develop, and replacement might be necessary at any time". The building inspection report also recommended that any Polybutylene piping be replaced as this type of piping has a high rate of failure.

While several Tenants argued they did not believe the renovations were necessary for their units, I find that the Landlord has provided sufficient evidence to support the renovations are necessary. Furthermore, Tenant C.B.2. and R.L. provided insufficient

evidence to support the idea that the same repairs have already been completed in their unit. Additionally, given that the piping and wiring is being replaced throughout the buildings, all facilities will be shut off and all mechanisms to separate and protect occupants will be removed, I find that vacancy is required for all rental units. Tenant C.B. also argued they noticed an improvement with the electrical systems in their unit; however, the Landlord has provided sufficient evidence to support that the electrical and plumbing require replacement, and any improvements were temporary fixes, as supported by the letter from the electrician.

(d) Whether tenancy must 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.

Based on the testimony and the evidence submitted, I find that the renovations and repairs will take 6-8 months. Based on the evidence presented, I do not find that it would be reasonable to continue the tenancies under alternative access or living arrangements during the renovation period. Additionally, I find that there is no requirement that the Landlord complete these repairs unit by unit or building by building.

(e) Outcome

For the reasons given above, I conclude that the Landlord is entitled to an Order of Possession for renovations and repairs under section 49.2 of the Act.

Pursuant to section 49.2(3) of the Act, I grant the Landlord an Order of Possession effective January 31, 2025, **at 1:00 PM**. This date is a full 4 months past the date of this decision, September 23, 2024.

I remind the parties that under section 51.4(1) of the Act, a tenant who receives an order ending a tenancy under section 49.2 of the Act is entitled to receive from the landlord on or before the effective date of the director's order an amount equal to one month's rent payable under the tenancy agreement. The tenant may withhold this amount from last month's rent.

I further remind the parties that under section 51.2 of the Act, where a tenancy is being ended under section 49.2 of the Act and the 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 the renovations or repairs are completed. To exercise their **right of first refusal**, the tenant must give the landlord notice in the approved form before vacating the rental unit. For more information, the parties may refer to Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, Convert a Rental Unit to a Permitted Use.

Conclusion

The Landlord's application is successful.

The tenancies must end due to renovations and repairs that require vacant possession. The Landlord has been granted an Order of Possession effective January 31, 2025, at 1:00 PM. This order 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 Act.

Dated: September 23, 2024

Residential Tenancy Branch