



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (application) for an order of possession pursuant to section 49.2 of the Act.

Those attending the hearing are listed on the cover page of this decision. At the start of the hearing, I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Issue(s) to be Decided

- Has the Landlord provided sufficient evidence to support that an order of possession should be granted under section 49.2 of the Act 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 of the Act.

Landlord's submission and evidence

The application involves four buildings, 16 units in total, owned by the Landlord. The buildings were built in 1976 and purchased by the Landlord in April 2024. The application details indicated:

- The Landlord requires vacant units to complete necessary plumbing work. Asbestos abatement is required and removal of fire separations during renovations will pose significant risk to health and safety. Water for all units will need to be shut off for an extensive period of time to complete work. Insurers will not provide coverage unless they receive evidence plumbing has been updated.

Legal Counsel submits the Landlord has obtained necessary permits required for repairs to plumbing at the buildings. The Building Permits for Plumbing Repairs dated May 6, 2024, were submitted in evidence. Legal Counsel submits the copper pipes in these buildings have a service life of 50 to 55 years, and are at the end of their useful service life as the buildings are 74 years old, as per the Building Inspection Report. Legal Counsel submits the City confirmed the work would take 6 to 8 months to complete.

The Landlord submitted the General Contractors Report to outline the scope of work:

Recommendations

1	Assessment of existing structures for potential safety hazards for entry by contractor and employees. Create safe environment of ongoing assessments, abatement and reconstruction activities.
2	Hazardous Material Assessment and Abatement - Selective demolition - remove/replace all damaged materials
3	Construct point load posts and beams - jack unit from crawl space to upper floor to remove depressions
4	Remove, repair/replace and install all windows including sill tape (blue skin) and insulation
5	Remove exterior siding at party walls, install membrane/flashing to waterproof and replace siding.
6	Remove and replace upgraded water supply including individual unit meters and drainage lines where required
7	Rework mechanical to negate excessive heat loss and improve distribution/air exchange to meet code.
8	Fire Stop all party wall and ceiling penetrations
9	Foam Insulate exterior walls and replace all insulation at party walls and ceilings were accessible
10	Repair, replace and drywall new walls and all ceilings
11	New Paint entire unit including new stippled ceilings
12	Install new flooring, closet shelving, trim and doors throughout

Additional Notes/Understanding

Upgrading/correction of the existing single point water service/drainage to all the existing structure can not be executed with tenant occupancy. The existing water supply will need to be disconnected and new service lines including water lines/meters, drainage and sewer lines will need to be installed in each unit. Re-occupancy can only occur once all City of Vernon building requirements have been inspected and a issued City of Vernon Occupancy Certificate has been approved and received. It is highly recommended that the currently available Unit 1809 be utilized as a baseline. Once the hazardous material assessment and any required abatement is completed we would suggest that all remaining wall coverings and subfloors be removed in order to conduct a thorough investigation to determine any corrective action required and allowing for a clear path forward for the remaining units.

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Legal Counsel submits that vacant possession of all units is necessary for health and safety reasons due to water shut off, and asbestos and drywall removal. Fire separations and walls will be removed, and the pipes, which are interconnected between the units, will be repaired.

Legal Counsel submits the Landlord completed asbestos testing through a consulting company, and based on the sample report they will need to proceed with repairs with vacant possession. The sample analysis summary was submitted as part of the Landlord's documentary evidence.

Legal Counsel referred to a letter from the General Contractor as supporting evidence. The letter indicates:

- All asbestos containing materials to be removed
- Units must be unoccupied as all mechanical services will be shut off to each unit while the work takes place

Tenants' submissions and evidence

Tenant BL testified that they learned from the City that the building permits for this project are for inspection only purposes, and are not work permits. Legal Counsel responded that the Landlord has all necessary permits in place as submitted in evidence.

BL stated that the Landlord could proceed with repairs one unit at a time. BL referred to photographs submitted in evidence to show the units only share partial walls. BL stated that the City confirmed for them that water for each unit could be shut off separately. Legal Counsel responded that the shared wall is a 25 foot wall, which is a significant connection, and the Landlord has submitted evidence to support the need of vacant possession for all units.

BL stated that only one unit was tested for asbestos and these findings are not reflective of all units in the buildings. Tenant SG testified that in 2018 there was a flood in their unit and the unit required repairs and asbestos testing, and it was determined that their unit did not have asbestos. Tenant JM also testified that the Landlord only proceeded with asbestos testing on a limited sample, and not all units. Further, Tenant JM stated that according to WorkSafe BC the Landlord would have to work on one unit at a time to protect their workers. Legal Counsel responded that all units require the same work as

per the Building Inspection Report. As the plumbing pipes have reached the end of their useful life, the Landlord needs to proceed with the repairs. The Agent testified that the Landlord does not have an asbestos report of the entire property, but this will be occurring in the new few weeks as they proceed with work.

BL stated that their unit was not inspected by the Landlord and they proceeded with their own inspection. BL referred to the Inspection Report dated August 22, 2024. BL stated that according to the Inspection Report eviction is not necessary.

The Tenants raised the issue of good faith. Tenant JM stated that the Landlord did not consult certified individuals but relied on their own contacts. Tenant JM stated the work required is for cosmetic purposes and is not necessary work. Tenant JM stated that although it may be cost efficient for the Landlord to evict for renovations, it is not necessary.

The Tenants testified that other repairs are required as per a Residential Tenancy Branch decision, however, the Landlord has failed to take action.

Legal Counsel submits the Landlord will address urgent and emergency repairs as a separate matter. Legal Counsel responded that the work is not cosmetic, and is supported by the evidence of the scope of work and third party professionals.

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 all tenancies must end as a result to permit all of the necessary work required. I have based on decision on the documentary evidence provided by the Landlord and that all of the required permits have been issued prior to the date the application was made.

Regarding the Tenants arguments of good faith, I find the Landlord has established the reason to end the tenancy. I find the Landlord intends in good faith to proceed with plumbing repairs, and has all necessary permits and approvals as required by law. The scope of work requires vacant possession, and these repairs are necessary to prolong or sustain the use of the units in the buildings.

While the Tenants argued they did not believe the repairs were necessary for their units, or are renovations for cosmetic purposes, I find that the Landlord has provided sufficient evidence to support the repairs are necessary. Given that the piping is being replaced throughout the buildings, all facilities will be shut off and all mechanisms to separate and protect occupants will be removed, such as fire separations, I find that vacancy is required for all rental units.

I accept Tenant BL referred to an Inspection Report completed for their unit in particular, however, in contrast I find the Landlord has provided sufficient evidence to prove the scope of work and repairs required on a larger scale for all four buildings.

I find that the testimony from the Tenants regarding the issue of asbestos was anecdotal at best, referring to repairs and situations that were not supported with further evidence. Further, I find the Landlord has established that the scope of work, which is outside of the asbestos removal, would still require the rental units to be vacant.

I find the Landlord has proven the requirement for vacant possession to proceed with such scope of work, and it would be unreasonable and unlikely for them to succeed in hiring contractors otherwise. I find that the repairs are significant and that the building must be vacant for the repairs to be completed in the 6 to 8 month timeline proposed.

The Landlord is required to compensate the Tenants as per section 51.4 of the Act. Given the above, section 49.2 (3) and 49.2 (4) of the Act apply and state:

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

Given the above, I grant the Landlord an order of possession effective **February 28, 2025, at 1:00 PM**. This date is a full 4 months past the date of this decision, October 15, 2024.

The Landlord must serve a copy of the attached Order of Possession on the Tenants as soon as possible.

Conclusion

The Landlord's application is successful. The tenancy must end due to repairs that require vacant possession.

The Landlord has been granted an order of possession effective February 28, 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 will be emailed to both parties. The order of possession will be emailed to the Landlord only for service on the Tenants.

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: October 15, 2024

Residential Tenancy Branch