



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 15, 2024. The Landlord applied for an order of possession for 1 rental unit in the basement of her home in order to perform renovations or repairs that require the rental unit to be vacant, under section 49.2(1) of the *Residential Tenancy Act* ("the Act").

All parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding package and evidence. The Landlord confirmed receipt of the Tenant's evidence. I find all documents were sufficiently served.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties had a previous dispute resolution in October of 2023, whereby the Landlord tried to end the tenancy for similar reasons but did not have enough evidence that all permits were in place prior to proceeding with that Notice. I note the Tenant feels this is the same application, so the Landlord shouldn't be allowed to reapply. However, I find it important to note that the merits of the Landlord's need for vacant possession was never fully discussed, such that I could find the matter has been conclusively dealt with

in the past. I find this hearing is necessary to discuss the merits of the Landlord's request, now that permits are allegedly in place for the work.

Issue to be Decided

- Does the tenancy need to end in order for the Landlord to perform renovations or repairs that require the rental unit to be vacant?

Background and Evidence

The Landlord explained that this rental unit is in the basement of her home, and she wants to make several changes to the layout and construction of the home so that she can make a home office, and a few other alterations.

More specifically, the Landlord stated that she used to rent an office which turned out to be cost prohibitive, which led to her seeking to modify her existing home layout so that she can put in a full office, for her private business, and change the existing suite laundry room into a bathroom that will accompany her proposed office space. Since the Landlord will be deleting the current laundry room for the suite to make way for her bathroom/office, she will be adding in stacked laundry in the suite kitchen. The Landlord will also take this opportunity to upgrade the sound isolation of the suite. The Landlord provided a copy of an email from the city confirming they would have to ensure sound separation is compliant with the building code. However, the Tenant emailed the city and they said the sound separating was not a requirement. The Landlord explained that the drywall of the whole suite will be pulled down as part of this renovation so that better sound proofing can be done between the house and the main suite/office area.

The Landlord also provided a copy of the project timeline from her contractor, who opined that the total estimated duration of the renovations would be about 3 months, along with his opinion that vacancy is required for the work that is being proposed.

The Landlord brought her electrician who confirmed that he will be upgrading the following:

- Upgrade main electrical panel from 100amp → 200 amp
- Install electric car charger
- Remove several portions of the ceiling and walls (drywall) to rewire part of the suite and part of the lower bedroom to make way for the new office space and bathroom.

- Remove portions of the kitchen walls to install new electrical for the washer and dryer that will be moved
- Re-wire about 50% of the suites electrical circuits to ensure compliance with electrical code.
- The proposed work will take about 5-6 weeks to complete

The Landlord also brought her plumber to the hearing who confirmed the following:

- The plan is to remove several walls and reconfigure the current laundry room to make way for a new bathroom, in a slightly different location, as well as relocated several main sewer, drains, and fixtures.
- The will require the Landlord to remove the flooring, jackhammer up portions of the concrete floor to put in new sewer lines to the new fixture locations for the new bathroom.
- Install new fixtures, toilets, and plumbing for the new washing machine placement in the suite.
- Open up walls in kitchen to add new laundry stack.
- Open up and remove several portions of the ceiling in the suite to make way for the dryer exhaust and bathroom fan installation. This requires long stretches of the ceiling drywall to be removed so that vents can be run to the exterior of the home.

The Landlord also brought another witness, who works with the Landlord:

- She confirmed that the Landlord used to work and share office space with her last year, but after she told the Landlord office rent would be increased, the Landlord opted to try to set up a home office.
- she confirmed that she is awaiting the Landlord's completion of her home office so that she can start to work with her again.

The Landlord further pointed out all of the permits she has in place for the renovations she has proposed. They are all in place and are provided into evidence.

The Tenant pointed to the hearing last fall where the Landlord was unsuccessful in ending the tenancy for a similar type of reason, so she does not feel the Landlord should be able to try again. The Tenant also pointed to her email from the city, who said that it is not a "requirement" for sound proofing to be done. The Tenant questioned the Landlord's financial challenges, since she is paying for all these renovations. The Landlord stated that her family is helping with the costs.

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.*

The Act provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

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.

...

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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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 MHPTA 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.

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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).*

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.

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

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.

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.

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

The onus is on the Landlord to provide evidence that the planned work reasonably requires the tenancy to end. I am satisfied the Landlord has the necessary permits in place, and did at the time of application. I have reviewed the testimony and evidence, and I am satisfied that this renovation is substantial enough in scope and duration which warrants ending the tenancy, rather than temporarily relocating, since the proposed work is very messy, disruptive and time consuming. The Landlord provided testimony of contractors and evidence to show this renovation will last approximately 3 months. Further, there is also evidence to show that the ceiling in the suite will need, at the very least, to be removed in several portions to make way for new plumbing, venting, electrical. The Landlord also is planning to remove and replace the entire ceiling in the suite to improve sound transfer. Regardless of whether the sound proofing is required, the Landlord is entitled to put that in if desired. I also note there are several portions of the floor which must be dug up, below the slab, to replace sewer lines in what is currently the suite laundry room.

I found the Landlord's witnesses' testimony to be clear and compelling on this point. The Landlord's electrician testified that the building electrical panel is no longer sufficient for modern demands, and needs to be upgraded. I am satisfied that some of the aspects of this renovation are necessary to prolong or sustain the use of the building where the unit is located. I am satisfied that the only reasonable way to complete the renovations is to end the tenancy, due to the nature and extent of the proposed work. Overall, I am satisfied that the Landlord has met the onus to demonstrate their good faith intentions regarding the

planned work, and that tenancy must end, pursuant to section 49.2(1) of the Act, for the above noted reasons.

I find the Landlord has met the requirements of Section 49.2 (1) of the *Act*. As such, I must grant an Order ending a tenancy and an Order of Possession. Therefore, it is Ordered that the tenancies will end on February 28, 2025, unless the Tenants choose to end it earlier under Section 50 of the *Act*.

An Order of Possession with an effective date of February 28, 2025, is issued with this Decision to the Landlord. The Landlord must serve a copy of the Order of Possession upon the Tenants no later than October 31, 2024.

Conclusion

The Application for Orders under Section 49.2 of the *Act* is granted.

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