



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 2161 HAULTAIN INVESTMENTS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      PFR

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for an order of possession for the rental unit 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").

The Landlord and several Tenants all 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. Both parties confirmed receipt of each other's documentary 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.

### 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

Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord explained that this rental building is around 65 years old, and has recently been acquired by the current owner. The Landlord has had a series of inspections and professional opinions, many of which provided written statements, to show there are several aging and concerning building components which should be replaced. More specifically, the Landlord stated that the primary purpose of the renovations are to replace existing plumbing lines, (drains and supply lines). They also want to do some reconfigurations, add in-suite laundry, and perform electrical upgrades, and other finishes such as flooring and trim.

The Landlord provided the following to highlight some of the work being done:

- Re & re: Bathroom Fixtures: tub/showers, toilets, sinks and taps (to meet “low-flow” BCPC specifications).
- Re & re: Kitchen Fixtures: sinks and taps (to meet “low-flow” BCPC specifications).
- Current BCPC requires that individual water shut-offs be installed in each unit.
- Re & re: all existing copper waterlines throughout the entire building as they are undersized by current Code requirements. The new engineered system also requires a new water-main be installed by the District of Oak Bay Engineering, a new main waterline from the meter to the building, and a recirculating hot water line that loops the entire building.
- Sewage vent stacks and lateral drainage lines are in various stages of deterioration. Numerous toilet flanges are visibly deteriorated and rotting the flooring/sub-structure.
- The required plumbing replacement of waterlines, sewage drainage stacks, new bath and kitchen fixtures to be installed will require extensive repairs including fire-rating, drywall, flooring, trim and paint repairs.

The Landlord provided a report from focus inspections, which speaks to generally to the reasonable condition of the plumbing and electrical systems, with a combination of new (some minor surface level electrical connections and plumbing parts) and old (original lines and pipes inside the wall and the ground) components. The Landlord also provided a letter from a mechanical engineering contractor who was hired by the Landlord. They opined that the current plumbing lines have exceeded their typical life expectancy of 20-25 year, and that it is recommended that they replace all existing water lines in a timely manner before leaks start to occur, given the building has supply lines in the walls that are over 65 years old. This engineering report specifies that the proposed upgrades include all water systems (hot, cold, and recirculating risers in each suite).

The Landlord also provided a letter from their contractor, BC Building, who opined that it is not feasible to safely undertake the required repairs with tenants in the building. He further opined that the repairs are “urgently overdue, necessary and extensive” and will

involve significant structural, electrical, mechanical, and fire protection upgrades to ensure the functionality, safety and longevity of the building. This contractor outlined the work as follows:

**General:**

- Suite repairs/updates involve total removal and replacement of all bathroom fixtures, plumbing water supply lines, sanitary drainage, drywall, fans, electrical wiring, and flooring. All suites have a single bathroom and it is unreasonable that a tenant could continue to live in a suite without bathroom facilities.
- Suite repairs/updates involve the total removal and replacement of all kitchen millwork, appliances, plumbing water supply lines, sanitary drainage (as required), drywall, fans, electrical wiring, and flooring. It is unreasonable that a tenant could continue to live in a suite without kitchen facilities.

**Electrical:**

- Suite updates involve the removal and replacement of existing electrical panels. The existing panels are filled to capacity and cannot accommodate the additional breakers and feed lines required to meet the current Electrical Code and Safety Authority requirements. This entails the removal and replacement/installation of fire rated materials, insulation, drywall, trim and paint to meet the Electrical Safety Authority/BC Building Code/BC Fire Code requirements. This work is so extensive that tenants would have no electricity for at least 12 months until final occupancy has been granted by the District of Oak Bay.

**Plumbing/Mechanical:**

- Building and Suite updates involve the removal and replacement of all kitchen and bathroom fixtures, all water supply lines, sanitary drainage (as required), and appliances. This entails the removal and replacement of drywall, insulation, ducting, sub-floors, including framing modifications and repairs to meet the current BC Plumbing Code/BC Building Code/BC Fire Code requirements. This work is so extensive that the suite would be uninhabitable for at least 12 months until final occupancy has been granted by the District of Oak Bay.

**Framing/Fire Separation (Interior Suites/Exterior Common Areas):**

- Upon the complete removal of suite bathrooms and kitchens to allow the required Electrical and Plumbing work there will be framing modifications (noted in the Architectural plans; that include structural repairs, additional back-framing and sub-floor remediation, repair, and replacement), as required.
- Each suite and common area will require various walls and ceilings to be opened up to allow for the required engineered plumbing and electrical upgrades to be installed. Once these upgrades have been completed all penetrations between walls/floor-assemblies must be fully fire-rated (as per BC Fire Code requirements). Upon inspection and approval of fire-rating all exposed walls, chases, and ceilings must be insulated, inspected, and approved (as per BC Building Code requirements).

He further opined that the building will be uninhabitable for at least 12 months, as all water and electricity will need to be shut off for a significant portion of those 12 months.

The Landlord provided copies of the necessary permits. They also provided a letter from their architect, who stated the following:

**As an architect, I cannot comment on a contractor's coordination of materials and methods on site during construction. In my professional opinion:**

- 1. It is not possible to safely undertake the proposed renovations in a suite that is occupied by a tenant. Attempting the proposed renovations to an occupied suite would pose levels of risk to life safety, discomfort and personal hygiene.**
- 2. Renovations may temporarily affect the safe separation between suites or between suites and common areas. Upgrades could also limit the safe operation of egress systems and could therefore result in vacating portions of the building.**
- 3. This scope of work may result in the Authority Having Jurisdiction withholding occupancy. Until such time as final approval is granted. This is done only when the upgrades are complete, and the consultants have submitted their final Letters of Assurance.**

**We have prepared the following scope description (Section 1), and a breakdown of tenant impacts (Section 2), to support the basis of the above determination.**

#### **Section 1 Renovation Scope**

**These upgrades include plumbing and necessary components to this building which have exceeded their expected life span. Such capital improvements are needed to prolong the lifespan of the building. These may include modifications of items that will require repair, upgrades or to maintain life safety and comfort. This is a general list; Additional conditions are likely to emerge during the course of renovations that may also require attention.**

- 1. Exterior (No work contemplated)**
- 2. Interior of Suites**
  - 2.1 All existing and new penetrations of rated walls to be adequately fire-stopped.**
  - 2.2 Doorknobs are installed throughout. Recommend upgrading to accessible, lever-type door hardware.**
  - 2.3 Installation of washer/dryers in each suite.**

- 2.4 Build new closets to house washer/dryer units in each suite.
  - 2.5 Installation of new kitchens in each suite.
  - 2.6 Replacement of all plumbing fixtures in each suite.
  - 2.7 Add partitions to some suites to create home office space or changes to kitchen layout.
3. Common Areas
- 3.1 Convert common laundry room to building maintenance office and storage room suite
  - 3.2 Door hardware in exits to be replaced with code-compliant exit hardware.
  - 3.3 Installation of washer/dryers in each suite.

In addition to the above items, any new materials and re&re updates to the fixtures or finishes must be completed with appropriate workmanship and to the 2024 BC Building Code.

#### Section 2 Implications for Tenants

As discussed in the introductory section of this letter, it is our opinion that the potential negative impacts on tenants during the proposed renovations would not be tolerable. Our recommendation is to fully vacate the premises at the outset, in order to allow work to proceed safely and efficiently. For further information on the coordination of construction material and methods, refer to the letter prepared by Charles Pakosh of BC Building dated September 26<sup>th</sup>, 2024.

Below is an outline of primary negative impacts on tenants that have been contemplated. Variations on this construction and remodelling effort are anticipated throughout.

- 1. Suite updates involve total removal and replacement of all bathroom fixtures. All suites have only a single bathroom and it is not reasonable to believe that a tenant could continue to live in a suite without bathroom facilities.
- 2. Suite updates involve the total removal and replacement of all kitchen millwork and equipment. It is not reasonable to believe that a tenant could continue to live in a suite without kitchen facilities.
- 3. As in-suite wall finishes and millwork are replaced, it is likely that required fire separation ratings will be compromised at walls separating the suite from other units and/or the corridor.

Also, the Landlord provided a letter from their plumbing contractor who confirmed the scope noted above, the duration, and the extensive nature of the repairs. He opined that the repairs are urgently necessary.

The Landlord also provided a letter from their insurer who spoke to the fact that the Landlord will need to fully update existing plumbing in order to be insured for water damage.

A few of the Tenants spoke at the hearing and were largely on the same page with respect to their opinion that these repairs are not necessary and can be done by doing the renovations to individual suites as they become vacant. The Tenants drew comparisons to nearby buildings which are well maintained, without any of the issues alleged by the Landlord. The Tenants questioned the good faith intentions of the Landlord and were concerned that they have a history of evicting tenants to perform renovations.

The Tenants took issue with the fact that much of the work, which necessitates vacant possession, is to install laundry in each unit, which is not necessary, pursuant to section 49.2(1)(c) of the Act. The Tenants assert the Landlord has used flawed logic to justify all these renovations, and they assert that the systems are all currently in good functioning condition, as per the report submitted by the Landlord. They pointed to the good or fair condition of most elements to show that these repairs are not “necessary”. The Tenants questioned the existence of the aluminum wiring, but the Landlord clarified this was a clerical error, and it is all copper.

The Tenants pointed out a few discrepancies in the Landlord’s paperwork, including a name anomaly with the Landlord’s plumber, which the Landlord explained as being a difference in the incorporated name versus the DBA name. The Tenants feel the Landlord could easily just do “targeted” repairs rather than a blanket eviction.

The Landlord acknowledged that their initial inspection report indicates that there is some overall life left in the building, but they point out that this report does not use expert opinions to speak to specific components, such as plumbing. The Landlord provided direct statements from other professionals to address the plumbing issues. The Landlord pointed out that they cannot do one suite at a time because all the water needs to be shut off for the building before the upgraded water lines can be put in. The Landlord stated that the primary motivator here is to upgrade the plumbing to mitigate insurance risk, and keep the building safe and habitable for the future.

### 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.*



First, I turn to section 49.2(1)(a). I am satisfied the Landlord has all the necessary permits in place to do the work they are planning to do. These permits are provided into evidence. The good faith intentions will be considered further, throughout this application. I acknowledge that the Landlord has been involved in other situations where they have evicted occupants of a building for large scale renovations. However, I do not find this is evidence of bad faith, as the Landlord is legally entitled to apply for this type of an order of possession, provided they meet the criteria under section 49.2(1).

Next, I turn to section 49.2(1)(b) of the Act. Some Tenants assert that the work can largely be completed by renovating units as they become vacant, over time. However, after reviewing the Landlord's evidence on this matter, I find I disagree that this is practical or reasonable, since the Landlord is planning to replace broader plumbing infrastructure in the building, which would likely cause extended utility disruptions for the entire building over an extended period of time. Although other work will also be completed alongside, the plumbing repair and replacement is the Landlord's stated primary objective. They assert the laundry is being done at the same time because it makes sense if all the other plumbing work is being upgraded at the same time. I accept the Landlord's explanation on this point, and I accept that there is a significant amount of plumbing in the walls and the ground which is nearly 65 years old, despite the fact that some portions have been updated over the years. The Landlord's plumber opined that the normal useful life of copper plumbing is 20-25 years, which puts the entire building at risk of flood or water damage, as corroborated by the insurance broker letter. I am satisfied that the primary objective is to address the aging plumbing infrastructure (supply lines, drain lines both in wall and underground).

The plumbing work and all electrical and carpentry work will lead to many walls and floors being opened up, and will cause utility service disruptions lasting many months at a time. The Landlord estimated about 12 months, as corroborated by their contractors. I am satisfied that the nature and extent of the repairs are such that it is not reasonable for the Tenants to remain in the unit.

Next, I turn to section 49.2(1)(c) of the Act. I note the Tenants largely feel these renovations are not a necessity, as the need for vacancy and the extensive scope is tied to flawed logic, including the manufactured "need" to put in laundry in each unit. The Tenants also feel the initial inspection supports that there is still ample life left in the existing infrastructure. Despite the fact that the Landlord may be able to squeegee

out a few more years of trouble-free living in the building when looking at items such as the plumbing and electrical, this is not guaranteed, and presents a risk to the Landlord, going forward. This risk is echoed by the insurance broker, and the Landlord's contractors. The Landlord's plumber clearly explained that the pipes are about 40 years past their typical life expectancy. I am satisfied that this work is necessary to prolong the use of the rental building, given the age of some of the components.

Next, I turn to section 49.2(1)(d) of the Act. I am satisfied that the extensive nature, combined with the extended duration of the project (and the significant impact to utility service delivery), make this project such that the only way to reasonably complete the work is to end the tenancy. Given the length of time, I do not find it is reasonable to allow the tenancy to continue while the Tenants seek temporary alternative accommodations. I am satisfied that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement. Overall, given the totality of the evidence in support of the Landlord's intentions and actions, I am satisfied they have a good faith intention to renovate and repair the rental unit, as outlined above. There is no question that significant cost and time has been invested by the Landlord to mobilize this project, and to ensure the law is complied with.

Having determined that all of the requirements in Section 49.2 (1) of the Act are met, I must grant an Order ending a tenancy and an Order of Possession. Therefore, it is Ordered that the tenancies will end on March 31, 2025, unless the Tenants choose to end it earlier under Section 50 of the Act.

An Order of Possession is issued with this Decision to the Landlord. The Landlord must serve a copy of the decision and the Order of Possession upon the Tenants no later than November 30, 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: November 20, 2024