

DECISION

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") dated September 27, 2024, seeking vacant possession of the rental unit to perform renovations or repairs.

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)

I find that the Tenants were served on October 17, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking numbers to confirm this service. Additionally, Tenant D.C. and Tenant C.S. acknowledged service of the Proceeding Package.

Background and Evidence

The Landlord purchased the rental property in 2018 and advised the rental property was built in 1964.

The Landlord advised the scope of work includes, abatement of asbestos, replacing the water lines, boilers, electrical systems and lighting. Additionally, the Landlord argued this work is necessary as the boiler, water lines and baseboard heating are past their useful life expectancy. The Landlord also advised that the insulation is not up to current code and needs to be replaced. The estimate provided by the Landlord's subcontractors for the work to be completed is 6 months.

The Landlord's position is that the rental units need to be vacant for this work because of the asbestos that was detected in the rental units and the rental units will not have heat, power or water for at least 3 months. Copies of the asbestos testing were provided as evidence. Additionally, it was advised the drywall will be removed throughout the rental units to access the plumbing and electrical. The Landlord provided an email from

the fire chief and the plumber supporting that the rental units need to be empty to complete the scope of work.

The Landlord provided a permit and approval letter from the city of Penticton. The Landlord advised that several rental units have already vacated or will be vacating in the coming months.

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) 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 provided a copy of a city permit for electrical upgrades, and conversion from gas to electrical heating and cooling.

(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).

The Landlord provided a copy of a hazardous material inspection report stating that the samples taken throughout the building tested positive for asbestos and that all wall and ceiling texture is assumed to contain asbestos. The Landlord advised remediation of asbestos to require five weeks, and the rental unit must be empty for the abatement process.

The Landlord further advised that kitchen and bathroom fixtures in the rental units must be removed to enable drywall removal to allow access to the electrical and plumbing systems that are to be upgraded. Additionally, the Landlord's advised that subcontractors estimate this work to take six months, and that the rental units will be without both water, power and heat for at least 3 months.

I find that the work to be done requires vacancy of the rental units as I find they will be rendered both unsafe and uninhabitable for the duration of the renovation.

(c) Renovations are necessary

The Landlord advised that there are ongoing issues with water leaks in the water supply lines and that the boiler is well beyond its natural useful life. The Landlord also mentioned the insulation is not up to current code. They also argued that other than the roof being redone, they are aware of no other major renovations or repairs being done to the building since it was built.

I accept that the renovations proposed by the Landlord are necessary to sustain the life of the rental building.

(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.

Due to the extent of the work being done to the residential property and the Landlord's affirmation that the renovations will require six months of work, I find it to be

unreasonable for the tenancy agreements to continue even if the Tenants are willing to make alternative living arrangements.

(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 **on March 31, 2025, at 1:00 PM**. This date is a full 4 months past the date of this decision, November 19, 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 **on March 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 *Residential Tenancy Act*.

Dated: November 19, 2024

Residential Tenancy Branch