



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

The Landlord completed this Application on October 12, 2024, for an order of possession so they could perform renovations/repairs that require the rental unit to be vacant, under s. 49.2(1) of the *Residential Tenancy Act* (the “Act”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Act* on November 12, 2024. In the conference call hearing I explained the process and provided the parties that attended the opportunity to ask questions, present oral testimony and make submissions during the hearing.

### **Service of Notice of Dispute Resolution Proceeding and evidence**

In the hearing, the Tenant confirmed they received the Landlord’s Notice of Dispute Resolution Proceedings and evidence served from the Landlord. On this basis, I find the Landlord served their evidence as required.

The Tenant did not provide evidence for this hearing. I stated to both parties that their testimony, affirmed under oath, is a form of evidence in this proceeding.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession to perform renovations or repairs, pursuant to s. 49.2 of the *Act*?

### **Background and Evidence**

In the hearing, the Landlord presented that they owned this property since 2009.

The Tenant presented that they had an agreement with their partner from 2018 through to 2020, then starting on a single-tenant agreement with the Landlord at that time.

The Landlord presented that the rental unit consists of the single home structure on the rental unit property. The Landlord wants to build a secondary suite in the rental unit house structure. This involves an addition onto the home structure at the front, and the entrance and bathroom were already complete. The Landlord described having to remove gyprock in order to install a separate electrical meter, as well as a secondary shut-off for the furnace.

The Landlord described the process involving the municipality as taking 8 months' time. Given the timelines involved if granted an end-of-tenancy for this renovation, they would give the Tenant occupancy until the end of winter 2024-25.

As evidence in this proceeding, the Landlord provided a municipality building permit issued on September 20, 2024, "Permit for secondary suite". In the hearing, the Landlord stated the permit was valid for six months. The Landlord accompanied this piece with a copy of the permit/card to be displayed on the property.

The Landlord also provided a copy of a letter from their contractor that noted the need for vacant possession of the rental unit. This notes "extensive renovations and alterations as outlined in the [municipality] approved plans. . . including the creation of a new rental suite." The work requires disconnecting the electricity, plumbing, and heating, thereby rendering the home "uninhabitable."

The Tenant, in their first response, noted that the permit in the Landlord's evidence set out: "Separate electrical and plumbing permits required." The Tenant shared their knowledge (based on discussion with the municipality) that all permits are required as evidence in an application by a landlord of this type involving a renovation-necessitated end of tenancy. Moreover, they are aware of the clear statements in the policy of the Residential Tenancy Branch on this particular issue.

The Landlord in response stated this was not possible where a contractor – either electrical or plumbing – was not able to enter the rental unit to inspect with the rental unit still occupied. The Landlord stated that these contractors are the ones who apply for such permits, based on their extensive experience building homes.

The Tenant raised other points setting out the history of this tenancy, which the Landlord met with explanations and responses:

- they received either a notice of rent increase and/or end-of-tenancy notices for unpaid bills/rent amounts
- the Landlord notified them of a family member's need for the rental unit
- the Landlord and a real estate agent attended at the property in line with a sale
- the Landlord was not undertaking repairs at the rental unit as required

To the Tenant, this latest attempt by the Landlord to end the tenancy is the culmination of the Landlord's efforts to end the tenancy after not being able to have a higher rent amount in place.

## Analysis

The *Act* s. 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 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 the 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.

The *Residential Tenancy Policy Guidelines*, in particular *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.*

The same policy guideline provides the following information on defining “renovations” or “repairs:

**Vacancy Requirement**

*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 testimony and evidence provided by the Landlord, who bears the burden of proof on the issue of required vacant possession, I find as follows:

- The Landlord did not describe all aspects of the work involved to a sufficient degree in this hearing. I find there is not an accurate item-by-item list of the work involved, in order to determine the scope of work that would impact the tenancy.
- The Landlord was not precise on all pieces of work needing to be completed or what they intend to work on. I am not satisfied the Landlord's description was comprehensive and covered all pieces; otherwise, the Landlord was not sufficient in detail with respect to the layout of the rental unit property to show it would impact the Tenant's living arrangement substantially for an extended period of time.
- Because of this, I am not satisfied the work involved is of such a nature that it requires vacancy, due to no proof that the work makes it unsafe for the Tenant to remain.
- There is no proof the Tenant cannot stay in the rental unit while the work is being completed, minus some discomfort or temporary loss of use of some parts of the rental unit.
- I find there is no proof that the work involved does not require major structural changes or other hazardous work that makes the unit unlivable.
- The Landlord did not provide evidence to show why such work could not be completed in phases, rather than have complete vacancy for their own convenience.
- Additionally, the Landlord did not show the timeframe would be prolonged to such an extent that the Tenant could not take up residence elsewhere for a brief period while the essential work was completed.

Additionally, as per the *Policy Guideline 2B*, the Landlord did not provide authority to prove that electrical permits and plumbing permits are not necessary – such permits as must be in place when they bring an Application to the Residential Tenancy Branch.

In summary, I find the Landlord has not met the onus to prove that the tenancy must end, pursuant to s. 49.2(1) of the *Act*, for the above noted reasons. I dismiss the Landlord's Application, without leave to reapply.

## **Conclusion**

I dismiss the Landlord's application, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: November 12, 2024

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Residential Tenancy Branch