



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on October 28, 2024 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession pursuant to section 49.2(1) of the Act, which states:

Director's orders: renovations or repairs

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.

The Landlords testified that they served their Proceeding Package and documentary evidence package to the Tenants by Canada Post Registered Mail on November 1, 2024 and further evidence on November 6, 2024. The Landlords provided the tracking numbers which have been recorded on the cover page of this Decision. I find the above

documents are deemed served to the Tenants five days later, on November 6 and 11, 2024, pursuant to Section 89 and 90 of the Act. I note the Tenants provided evidence in response to the Application, however, no one attended the hearing for the Tenants to present the evidence for my consideration.

The Landlords were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

- Has the landlord provided sufficient evidence to support that an order of possession should be granted 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 Landlords stated that the tenancy began on January 20, 2022. Currently the Tenants are required to pay rent in the amount of \$2,600.00 which is due on the 20th day of each month. The Tenants paid a security deposit in the amount of \$1,300.00 which the Landlords continue to hold. The Tenants continue to occupy the rental unit.

The Landlords stated that they purchased the rental property in 2021 and performed significant renovation to the rental unit at that time. The Landlords stated that since then, they have experienced many plumbing issues, from clogged drains to burst pipes. The Landlords stated that they have the plumber attending the rental unit frequently to try and repair the issues, however, it appears as though the plumbing system requires complete replacement. The Landlords stated that the rental unit is now experiencing mold issues as a result of the leaks.

The Landlords stated that the Tenants have been resistant to the repairs and even called WorkSafe BC to ensure the Landlord is performing the work in a safe fashion. The Landlords stated that the Tenants have refused the Landlord entry into the rental unit and that the Landlords wants to work with the Tenants to make sure they are taken care of, and the rental unit can receive the necessary repairs to ensure there are no more plumbing issues. The Landlords stated that the Tenants continue to be resistant,

which is why the Landlords are seeking vacant possession of the rental unit to complete the repairs to the plumbing system.

The Landlords stated that they have obtained a plumbing permit, but have been unable to gather any further evidence as a result of the Tenants' interference and denial of entry into the rental unit.

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 Landlords have provided insufficient evidence that all four parts named above from A to D have been met and that the tenancy must end as a result of the plumbing work proposed by the Landlords.

I find that the Landlords have provided insufficient evidence to support that the plumbing in the rental unit is failing and that it needs to be completely replaced. There is no report from a plumber outlining the scope of work, the cost associated with doing the work, and how long the work will take to complete.

There is insufficient evidence to demonstrate that the repairs require the rental unit to be vacant. The Landlords referred to the Tenants' resistance to the work which I will address below. I find that the plumbing permit does not outline the scope of work being performed by the Landlord.

In light of the above, I dismiss the Landlord's Application with leave to reapply should the Landlords obtain supporting evidence to satisfy the requirements of Section 49.2(1).

During the hearing the Landlords referred to the Tenants denying the Landlords entry into the rental unit for repairs.

I note the Residential Tenancy Branch Police Guideline 7 offers some useful information which is applicable to both parties in this situation;

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. Notices must also be served in accordance with the Act.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,

- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. The Tenant is cautioned that if they prevent the Landlords from entering the rental unit after valid notice of entry has been given, it may form sufficient cause for the Landlords to end tenancy.

Conclusion

The Landlord's Application is dismissed with leave to reapply. The parties are encouraged to work together regarding allowing entry into the rental unit for the purpose of inspecting the plumbing and conducting necessary repairs in accordance with the Act.

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 26, 2024

Residential Tenancy Branch