

DECISION

Dispute Codes PFR

Introduction

On November 8, 2024, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* (“the Act”) requesting an order of possession for the rental units listed in this application in order to perform renovations or repairs that require the rental units to be vacant.

The matter was set for a conference call hearing on December 17, 2024. All respondents named in this application attended the hearing, as well as the landlord applicant.

The tenant GW confirmed that they were not disputing the landlord's application, and agreed to vacate their rental unit. The landlord requested an Order of Possession for the remaining rental units.

Service of Application and Evidence

The tenants confirmed receipt of the landlord's application and evidence, and that they were prepared to proceed with the hearing.

The landlord confirmed receipt of the tenants' evidentiary materials, and that they were read to proceed.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This application pertains to a rental building containing six total rental units. Five of the rental units are currently occupied. The landlord filed this application because they feel that vacant possession is the only possible way to perform the repairs required.

The landlord described the work they need to do, which is to “remove and reinstall entire exterior envelope plus new wall cladding, windows, doors, insulation, roofing. Interior renovations to upgrade entire commercial/residential units. Extensive demo of exterior stucco & interior wall/ceiling finishes, new installation of mechanical and electrical systems. All demolition materials are Asbestos Containing, so removal involves high-hazard abatement. Mechanical/electrical systems to be removed/reinstalled, extended period without power/water in building. “

The landlord submitted the following in support of their application: a detailed construction project plan report, communication with the city confirming requirements for permit issuance, an asbestos report by a hazmat consulting company, and a list of consultants and associated contracts.

The landlord confirmed that the work is not cosmetic, and testified that the work requires opening the building envelope from the inside and outside to access the insulation, plumbing, and electrical work. The landlord testified that it would be unsafe to perform the work while it is occupied, and that the work is so extensive that it requires the building to be vacant for an extensive period of time.

The landlord confirmed that they will pay to the tenants the required compensation under the Act and the city’s Tenant Relocation and Protection Policy (“TRPP”).

The tenants expressed concern about the landlord’s compliance with the TRPP, and the lack of affordable housing available if they had to move. The tenants questioned whether the work is truly required, and whether vacant possession is required in order to perform the work.

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.

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 the tenants, 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 tenancies to end. In consideration of the evidence before me, I am satisfied that extensive repairs, upgrades, and abatement are required, and that due to the risk to the tenants and anyone occupying the units, the building needs to be vacant for the duration of the work. I am also satisfied that the timeline is lengthy and uncertain, and therefore vacant possession is required in order for the landlord to perform the work.

I find that the landlord provided very detailed documentation to support that they had taken the appropriate and required steps to undertake this work in order to maintain the property in a state of decoration and repair that complies with health, safety, and housing standards are required by law.

I accept the landlord's evidence to support that they had inquired to ensure that they have any required permits prior to applying for dispute resolution. I find that the landlord's evidence supports that they are ending these tenancies in good faith to perform necessary repairs, and have no ulterior motive for doing so.

I have taken in consideration the hardship this would cause the affected tenants, and although the RTB does not enforce compliance with municipal policies and requirements, the landlord confirmed under oath that they would be fully compliant with the city's TRPP.

I find that the landlord has met the significant burden of proof to support that this application was made in good faith, and that they truly require complete and vacant possession of the rental units in order to complete required and necessary repairs in a timely manner. I have weighed the rights of the tenants and the landlord's obligation to consider alternative options, but I am satisfied that the specified repairs are required to preserve and sustain the use and life of the rental building. Although the tenants raised the question of whether the work can be completed without the tenants permanently vacating the building, I do not find that the landlord has a reasonable alternative.

I have considered the evidence before me, and I am satisfied that all the considerations set out in section 49.2(1) of the Act apply. The Landlord's application to end all tenancies in the building, and obtain an order of possession for the rental units is granted.

In accordance with section 49.2(4), I grant the Landlord an Order of Possession for all rental units, effective May 30, 2025.

The Tenants have a right of first refusal and must give the Landlord notice that they want to exercise this right by completing form #RTB-28 and giving the completed form to the Landlord before vacating the rental unit.

In accordance with section 51.4 (1) A tenant who receives an order ending a tenancy under section 49.2 [*director's orders: renovations or repairs*] is entitled to receive from the landlord on or before the effective date of the director's order an amount that is the equivalent of one month's rent payable under the tenancy agreement.

As noted above, enforcement of the city's TRPP is outside of the RTB's jurisdiction. Tenants should seek their own legal advice or contact the city in regards an issues with the landlord's compliance with the TRPP.

Conclusion

I grant the landlord's application for an Order of Possession for all rental units located at the rental address.

I grant the Landlord an Order of Possession effective May 30, 2025. For enforcement the Tenants must be served with the order of possession. Should the tenant(s) and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of 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 Act.

Dated: January 16, 2025

Residential Tenancy Branch