

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") dated January 19, 2025, seeking vacant possession of the rental unit to perform renovations or repairs.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

I find that the Tenant was served on February 13, 2025, by posting it to the door of the rental unit in accordance with section 89(1) of the Act. The Landlord provided a proof of service form.

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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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?

Background and Evidence

The Landlord acquired the property around 2006. The Landlord plans to remove the ceiling in the living room and master bedroom, replace the windows and walls and completely gut the kitchen and bathroom. The Landlord argued the renovations are necessary because of the mold in the rental unit. The Landlord advised no mold testing has been done but it is obvious to the eye there is mold. The Landlord also argued there

is asbestos, but again no testing has been done to confirm this. The Landlord argued they are qualified to determine if there is asbestos.

The Landlord's agent A.V. (the Landlord's Agent) confirmed the renovations are cosmetic in nature and should take between 4-6 weeks. The Landlord's Agent advised water, and electricity will be shut down during the renovations. The Landlord provided correspondence with the city building inspector confirming permits are not required because the work is cosmetic in nature.

The Tenant is willing to accommodate any renovations and move around the unit as required. The Tenant also advised they would be willing to find alternative accommodation for a short period of time. The Tenant's position is that the Landlord does not intend to complete these renovations but is using this to evict the Tenant as all other attempts have failed. The Tenant also argued repairs have been needed for years and the Landlord never completes them. The Tenant advised there is mold in the rental unit but they are working to address that problem.

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.

I accept the Landlord's testimony that permits are not required for the renovations or repairs as they are cosmetic in nature, and this is supported by the email from the city building inspector.

(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).

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. ...

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing backsplashes, cabinets, or vanities.

The Landlord has provided insufficient evidence that the nature extent of the renovations requires the tenancy to end. The Landlord's Agent confirmed that the renovations are cosmetic in nature and should take 4-6 weeks. Additionally, while the parties agree there is mold in the rental unit there is insufficient evidence that the mold removal cannot be done within a few days, and the Tenant has indicated they would be willing to find temporary accommodation to assist with the renovations. Furthermore, The Landlord claimed there was asbestos; however, no testing has been completed to confirm this.

Therefore, I find the Landlord has not established a requirement for vacant possession.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord would improve the rental unit: however, much of the renovations are cosmetic in nature. Additionally, the Landlord claims there is asbestos in the rental unit; however, no testing was provided to support this.

As such, besides the mold removal, I find that the Landlord has not proven that the renovations are necessary to prolong the life of the rental unit.

(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.

The Landlord's Agent argued the renovations would take 4-6 weeks and the Tenant advised they are willing to accommodate repairs and renovations in the interest of continuing their tenancy. As such, I find that the tenancy agreement does not need to end to achieve the necessary vacancy.

In summary, I find it is not necessary to end the tenancy agreement because the Landlord has not sufficiently established the requirements under section 49.2 of the Act.

Conclusion

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

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: March 21, 2025

Residential Tenancy Branch