

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Vacant possession of the rental units to perform renovations or repairs.

G.K. (the Landlord) attended the hearing on their own behalf.

J.N., F.E., and T.E. attended the hearing for the Tenants.

### **Issue to be Decided**

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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 (the Proceeding Package)**

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Based on the evidence of the parties, I find that the Landlord served the Proceeding Package to all the Tenants via registered mail on March 6, 2025. I find that the Tenants were served, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

### **Service of Evidence**

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Based on the evidence of the parties, I find that the Landlord served their evidence to the Tenants by pre-agreed email on March 15, 2025. Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Based on the evidence of the parties, only Tenants F.E. and T.E. submitted evidence. This was served to the Landlord via registered mail on or around March 21, 2025. The Landlord confirmed receipt of their evidence. I find that the Tenants F.E. and T.E. served their evidence to the Landlord in accordance with section 88 of the Act.

## Background and Evidence

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The Landlord purchased the home in November 2019, which is in Nanaimo. The home was built in 1984 and the Landlord advised that much of the home requires cosmetic and noise dampening upgrading.

The home has two units. The upstairs unit is occupied by J.N., their spouse, and their five children, four of whom reside there full-time. The basement unit is occupied by F.E. and T.E. and included in the rental price is access to the workshop on the property.

The Landlord's provided affirmed testimony that they would like to upgrade the home to improve the appearance, and to better suit the needs of the Tenants in terms of noise dampening. The Landlord explained that the Tenants frequently make complaints regarding noise. The Landlord also explained there were also rotting issues in the lower unit sink counter, deck, and the outside fence. The Landlord provided a scope of work email sent to the Tenants of the upstairs and downstairs unit:

### Upstairs:

- **Kitchen:** Replace sink, counters, and cabinets (this includes removing certain cabinets and modifying the layout of the counters), and install new flooring.
- **Bathroom/Laundry:** Replace vanity, sink, floor (grouting is deteriorating), cabinets, bathtub, toilet, and bathroom exhaust fan. This will also require opening up the walls to secure plumbing.
- **Remaining Areas:** Install new flooring throughout to address noise reduction concerns (this has been an ongoing issue). The entire house will also need to be repainted.

### Downstairs:

- **Kitchen:** Replace sink, counters (as they are rotting), cabinets, and flooring.
- **Bathroom/Laundry:** Replace vanity, sink, floor, cabinets, bathtub, toilet, and bathroom exhaust fan. This will also require opening up the walls to ensure the plumbing is secure.
- **Remaining Areas:** Install new flooring throughout. The entire house will also need a fresh coat of paint. Additionally, the door casings and baseboards require updating.
- **Understairs Area:** The area under the stairs appears to lack adequate insulation. Adding insulation and drywall will help reduce noise from the stairs.
- **Basement Entrance Door:** This door also requires updating due to previous issues that have been raised.

### Outside:

- **Deck:** The deck requires replacing planks as several boards are starting to rot, and repairs are necessary to ensure safety.
- **Fascia Board & Fence:** The fascia board on the exterior and parts of the fence are rotting and require maintenance.

In the same email, the Landlord explained that in the area under the stairs and other areas there “may” be asbestos:

Additionally, I want to note that the area under the stairs, along with any other areas that might be affected by the renovations, may expose insulation that could potentially contain asbestos, as

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the house is older. This could pose serious health risks if not handled properly. It is crucial that any asbestos is addressed in a safe and controlled manner during the renovation process to prevent any health issues. As a result, this area will need to be vacated during the work.

The Landlord explained that no permits were necessary for this renovation and provided a screenshot from the City of Nanaimo website that simply states, “a building permit is required when you are altering an existing dwelling including construction additions, covered front entries or decks, deck covers, and stairs onto the building”. The Landlord did not provide any written confirmation from the City of Nanaimo or a qualified tradesperson.

In response to questions regarding why the Landlord required vacant possession, the Landlord testified that their contractor told them it would take approximately four months to complete the renovations and that he “prefers” that no tenants be in the home as it would make it easier for him to work. The Landlord explained that it would be a hardship for the contractor to have to worry about “breaking the tenants’ possessions” and that it would be more expedient for them to come and go as they please. The Landlord testified that while the work could be done with the tenants in the unit, it is preferred that the unit be empty.

In response to questions about whether any services would be cut off during the renovations, the Landlord was unsure but thinks there would be some minor plumbing disruption while bathroom renovations are ongoing.

In response the basement unit tenants, T.E. and F.E., provided affirmed testimony that they do not believe the Landlord has met the test of requiring vacant possession during

the renovations. T.E. and F.E. explained that when they first looked at the unit, work to the cabinets and counters was discussed, but they were to remain in the unit. Furthermore, some of the work being discussed is regarding plumbing or electrical and they are certain that this does require permits, contrary to what the Landlord has said. In response the Landlord's comments about possible asbestos, T.E. and F.E. say this is unlikely because the house was built in 1984 and the chances are slim. They also point out that contractors do not just "open up walls" before testing, and if there is asbestos they know that permits are necessary. Recently their daughter had asbestos and they are intimately familiar with the process. T.E. and F.E. would like to continue residing in the unit during the renovations, and if the contractors require their unit during the process they have a travel trailer they can reside in temporarily while the contractors are in their unit.

Tenant J.N. stated that they believe that vacant possession is not required for the renovations. If there are periods where the contractors need access to their house, or if essential services like plumbing are unavailable, they can temporarily move in with family. Tenant J.N. states that the Landlord is seeking vacant possession "on advice" as a means to get rid of the existing tenants and raise the rent.

In closing, the Landlord stated they needed more money from the Tenants if they want to remain in their respective units. The Landlord will have to expend approximately \$60,000.00 to \$100,000.00 on the renovations and wants to recoup this from the Tenants.

## Analysis

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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.*

The Act states that the director must grant an order ending the tenancy and grant the landlord an order of possession if the director is satisfied that **all** the circumstances in subsection (1) apply.

The Residential Tenancy Branch Policy Guideline 2B(B) provides the following information:

*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.*

Guideline 2B provides further information as follows:

*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.*

I find the Landlord failed to satisfy the first requirement under section 49.2 (1) as they did not have the necessary and required permits, or proof from the municipal or provincial authority, qualified engineer, or certified tradesperson stating permits were not required for the planned work.

Apart from that, the Landlord indicated that the proposed work was cosmetic and that it was preferred by the contractor that the Tenants leave but it was not mandatory, and for these reasons, I find insufficient evidence the rental unit was required to be vacant. Therefore, it was not necessary to consider any further requirements under the Act.

Based on the above, I find the Landlord has not met their burden of proof under the Act due to insufficient evidence that the building permits or approvals were in place or proof that no such permits or approvals were required for this work, or that the proposed cosmetic work required the rental unit to be vacant.

For this reason, I find it was not necessary to consider the Landlord's good faith intention to renovate or repair the rental unit.

## **Conclusion**

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The Landlord's application is dismissed without leave to reapply due to the insufficient evidence cited above.

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: April 3, 2025

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Residential Tenancy Branch