DECISION

Introduction

The Landlord seeks orders pursuant to s. 49.2(3) of the *Residential Tenancy Act* (the "*Act*") to end a tenancy and be granted an order of possession for a rental unit on the basis that it requires renovation or repairs.

J.R. attended as the Landlord's agent. A.B. attended as the Tenant and was joined by her roommate, D.C., who assisted her in her submissions.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Application and Evidence

The Landlord's agent testified that the Tenant was served with the Landlord's application and evidence, which the Tenant acknowledged receiving without issue. Accepting this, I find under s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord's application materials.

The Tenant confirmed that she served no evidence in response to the Landlord's application.

Preliminary Issue – Landlord's Previous Application

The Landlord on this application described its claim as follows: "Full rewire of the rental unit". The current application was filed on March 27, 2025.

At the outset of the hearing, the Tenant's roommate advised that the parties had been before the Residential Tenancy Branch on a previous application filed by the Landlord seeking orders under s. 49.2 of the *Act*. The Landlord's agent confirmed this and provided me with the previous file number, which I have noted on the cover page of this decision.

Speaking broadly, a party is prevented at law from advancing the same claim when it has previously been decided. This is known as the doctrine of res judicata, which has two branches, one of which, issue estoppel, may be relevant to these circumstances.

The relevant principles of issue estoppel are summarized in *Erschbamer v Wallster*, 2013 BCCA 76, which states the following:

> [12] The general principles of the doctrine of *res judicata* were reviewed by this Court relatively recently in *Cliffs Over Maple Bay*. The doctrine has two aspects, issue estoppel and cause of action estoppel. In brief terms, issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding. Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding. If the technical requirements of issue estoppel or cause of action estoppel are not met, it may be possible to invoke the doctrine of abuse of process to prevent relitigation of matters.
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> [13] In *Cliffs Over Maple Bay*, Madam Justice Newbury set out the requirements of issue estoppel at para. 31(from *Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No. 2)*, [1967] 1 A.C. 853 at 935, as quoted with approval in *Angle v. Minister of National Revenue*, 1974 CanLII 168 (SCC), [1975] 2 S.C.R. 248 at 254):
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> (1) that the same question has been decided;
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> (2) that the judicial decision which is said to create the estoppel was final; and,
>
> (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised, or their privies....

Review of the previous matter referred to me by the parties shows both the same Landlord and Tenant are listed in that application, that is tied to the same rental unit, that the Landlord filed the previous application on January 23, 2025, and that that matter was heard on February 21, 2025. In the previous application, the Landlord noted that it sought relief on the basis that “[m]ajor renovation as a secondary suite is added to the property. Plumbing and electrical are being replaced”.

In a decision dated February 25, 2025, the Landlord’s previous application under s. 49.2 of the *Act* was dismissed, without leave to reapply. The previous arbitrator outlined that the Landlord was seeking to convert the residential property, which is currently a duplex, into four separate units. The Landlord’s agent, at the previous hearing, is noted as having advised that the work included upgrades to the electrical panel and the hot water tank, with the Landlord having submitted an electrical permit dated January 24, 2025. There were further submissions related to work to be completed to the plumbing system.

In dismissing the claim, the previous arbitrator found, as it related to the plumbing work, that there was no permit in place to complete the work, thus failing to satisfy the

requirements under s. 49.2(1)(a) of the *Act*. With respect to the electrical work, the wrote as follows:

> I accept the Landlord filed an electrical permit dated January 24, 2025, and the scope of work indicated that existing wiring is aluminum and must be removed for safety and insurance requirements. However, in this case, I find the evidence before me does not confirm that the renovations or repairs require the rental unit to be vacant, or that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.
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> Further, the Landlord did not submit the any 'scope of work' details or a report from the contractor or the electrical company, which would have included details of the projected work, related timelines, and confirmation that the renovations or repairs require the rental unit to be vacant.
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> Based on the above, I find the Landlord has not met their burden of proof under the Act due to insufficient evidence that the permits or approvals were in place and that they require vacant possession of the rental unit.
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> I dismiss the Landlord's application, without leave to reapply.

The Landlord's agent argued that it had new evidence in the form of an opinion from the electrical contractor, as well as a timeline on the work to be completed, such that the facts had changed. Upon review of the evidence before me, no opinion was submitted by the Landlord. Further, the evidence before me on this application is largely the same as that submitted in the previous hearing, except for a plumbing permit application filed by the Landlord with the municipality that was before the previous arbitrator and a summary schedule for the renovations prepared by the Landlord before me.

I find that there is no basis for rehearing the current application. The parties in this matter are the same. The Landlord is seeking to replace the existing aluminum wiring, though as argued by the Landlord's agent at the hearing before me is now doing so because it is a safety risk. At its core, however, the issue is the same and the rationale used to justify it has not changed since it is based on the same reason listed in the electrical permit from January 24, 2025. Finally, the previous decision was final.

The Landlord has submitted a self-generated excel sheet with the renovation schedule, indicating renovations were to commence on August 1, 2025. However, this evidence is wholly unpersuasive as it is unsupported by any corroborating agreement with a demolition or remediation contractor.

Critically, as was an issue at the previous hearing, the Landlord has submitted no new evidence to support that vacant possession of the rental unit is required as per s. 49.2(1)(b) of the *Act*. The facts as presented in the evidence before me are in all material aspects the same as those before the previous arbitrator. The Landlord is essentially rolling the dice by filing this application a month after receiving the previous

decision in the hopes of a different outcome after presenting the same evidence. I find that doing so is improper.

To be clear, the Landlord may have issue with the findings of the previous arbitrator. I am not, however, in a position to sit in appeal of the previous decision, which was clearly a final and binding decision on the same issue in dispute between the parties. I make no comment on the previous arbitrator's findings as the correct venue for dealing with them is through the review process under s. 79 of the *Act* or through judicial review.

Conclusion

I find that the matter before me has previously been decided by way of the decision dated February 25, 2025. Accordingly, I dismiss this application.

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 30, 2025

Residential Tenancy Branch