



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (application) for an order of possession pursuant to section 49.2 of the Act.

Those attending and representing at the hearing are listed on the cover page of this decision. At the start of the hearing, I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act. Further, both parties confirmed that they reviewed all evidence and were prepared to proceed with the hearing.

At the outset of the hearing Tenant OB provided their full legal name.

Based on the testimony provided and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.12, I amended the Landlord's application to include the correct and full name of Tenant OB.

Issue(s) to be Decided

- Has the Landlord provided sufficient evidence to support that an order of possession should be granted under section 49.2 of the Act 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 Landlord has applied for an order of possession pursuant to section 49.2 of the Act.

Landlord's submission and evidence

The application involves a five storey building (the Building), with 38 units in total. The Building is 116 years old. Representative BW (BW) for the Landlord stated that the work projected will impact one column (#06 Column) of the Building, thereby, impacting five units in total as listed in their application before me. The application details and attached description indicated:

- Please see reno description (Reno Description)

The Reno Description which was submitted in evidence reads as follows:

The building in question is 116 years old. Although we have repaired the domestic supply lines in places, we have not replaced the cast iron drain lines. They are original. These lines reached their end of life some time ago and are now crumbling. In places they are so thin any attempt to clamp leaks just crushes the pipe. We fear they are at risk of imminent failure.

Unlike the supply lines, all apartments in a column (106, 206, 306, 406...) are serviced by the same 3 or 4" pipes. Any attempt to replace the pipe in one unit renders all the other units in the column uninhabitable.

The process will entail gutting all the bathrooms in the column completely and replacing all supply and sewage plumbing. The ceiling, wall surfaces and floors will then need to be replaced.

We have recently completed the same process for the #04 column in the same building. The work took in excess of 6 months and the units were uninhabitable while under construction as none of the plumbing (sinks, bathtubs or toilets) were functional.

In addition, due to the building's age, WCB rules required abatement of hazardous

materials. The process of abatement also requires that the unit be empty of tenants and their belongings.

[reproduced as written]

BW referred to photographs submitted as part of the Tenants' documentary evidence. BW stated that the bathrooms of #06 Column have tile flooring, with concrete beneath the tiles. The plumbing drains go into the concrete floors, and those pipes in the concrete are failing, "paper thin" and in need of replacement. BW testified that given the pipes for all bathroom plumbing run through the concrete to the main stack in the plumbing chase, they need to remove all fixtures, jack hammer the concrete, remove the ceiling and create a false ceiling for installation of pipes. This process repeats turn by turn for all bathrooms of #06 Column.

BW testified that all plumbing connections lead to the main stack and there was the risk of a malfunctioning main stack. BW stated that the vertical pipe of cast iron is a short pipe that joins the main pipe. There was the danger and possibility of a shifted pipe that could "tear off". BW testified that although the work will be completed for two units at a time, the Landlord requires vacant possession of #06 Column due to the possible shifted pipe concern noted above.

BW testified that asbestos testing was completed 10 years ago and they can confirm there was no related issues in the Building. BW indicated the presence of lead paint, and stated they worry about the related dust and, therefore, request vacant possession of #06 Column.

The Landlord also submitted the following as part of their documentary evidence;

- Sprinkler Permits, Plumbing Permits and Electrical Permits for 106, 206, 306, 406 and 506 of #06 Column
- A letter from their general contractor, which I will refer to as the Contractor's Letter in this decision

BW stated that the work that was projected for #06 Column was previously completed for #04 Column between summer 2024 until March 2025. BW stated that as per the Contractor's Letter it will take approximately six months to complete the projected work. BW estimated the total cost of \$250,000.00, and stated that similar work to #04 Column cost the Landlord the total amount of \$273,000.00.

Senior Plumber CE (CE) for the Landlord confirmed the poor condition of the plumbing pipes of the Building, and stated the work would need to be completed carefully in consideration of the possibility of a malfunctioning main stack. CE stated that the work could not be completed one unit at a time.

Tenants' submissions and evidence

Legal Counsel DM (Counsel) for the Tenants submits that prior to this hearing the Landlord failed to indicate that the original piping was in danger of critical failure, or that the cast iron drains were never replaced, were thin and at risk of imminent failure. Counsel argued that the pipes were not tested and no reports or details were provided to the Tenants. Further, Counsel submits the overall details of construction or scope of work for #06 Column were not provided to the Tenants.

Counsel submits the Landlord failed to provide City permits for asbestos, or hazardous material removal and the abatement process, to include a temporary street permit for placement of debris.

Tenant PA (PA) stated that they were a licenced plumber with ten years of experience. PA stated that there was lack of evidence for the projected work, such as no photographs and no expert details on the condition of the pipes. PA stated that the Landlord could reverse the order of work, by first building the main stack with new piping, and thereafter exposing the ceiling underneath each unit for the layout of new piping. PA stated that the Landlord could layout new piping first to mitigate the risk of a failed main shaft.

Counsel argued that the Landlord does not require vacant possession, and the work could be completed in a shorter period of time than projected by the Landlord.

The Tenants dispute that the tenancy is being ended in good faith by the Landlord. Counsel referred to the Affidavit of OB and photographs to show the Landlord previously pursued the work for cosmetic purposes and for re-rental at higher monthly rent.

BW responded that the work was projected for the bathrooms only, and not for the kitchens of #06 Column. BW stated that although the approval and permits included the kitchens, they never raised repairs to the kitchen as part of the scope of work for this project.

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.

Tenancy Policy Guideline 2B provides the following information:

Vacancy Requirement

Section 49.2 allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. While any period of time in which the unit must be vacant may be sufficient to meet this requirement, as discussed below, the landlord must also prove that the only reasonable way to achieve the necessary vacancy is by ending the tenancy agreement.

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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time.

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.

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy.

When a dishonest motive or purpose for ending the tenancy is raised, the onus of proof is on the Landlord to establish they are acting in good faith: (see *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165; *Doell v. Doe*, 2022 BCSC 655; and *Sandhu v Gill*, 2024 BCSC 412).

I find the Landlord did not provide sufficient evidence to support an order of possession under section 49.2 of the Act for the reasons explained below:

Firstly, the Electrical Permits show the work description of “kitchen and bathroom reno with lights plugs and switches,” and interior alterations to provide improvements to the bathroom and kitchen. The Plumbing Permits indicate “rough in and finishing of following fixtures,” and interior alterations to provide improvements to the bathroom and kitchen. The additional information for fixtures shows replacement of fixtures, however, there was no indication of repairs or replacement of drains or pipes. I find the work description shows renovations that do not require vacant possession as claimed by the Landlord.

Further, the Tenants indicated willingness to accommodate vacancy to the extent of such repairs or renovations that were justified and proven. I find BW referenced and relied on the work completed for #04 Column, however, they provided no supporting evidence to detail work that was completed and the requirement of vacant possession. I accept the Landlord’s plan to proceed with repairs or renovations to a certain extent, however, 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.

With respect to the renovation to the kitchens in #06 Column, BW stated that no such work was planned or part of the current project, whereas I find this statement contradicts what was clearly detailed in the Electrical Permits and Plumbing Permits before me. I find the work description details on the Electrical Permits and Plumbing Permits do not match the Reno Description and testimony provided by the Landlord. I

also place minimal weight on the Reno Description, as this document was not signed or dated. I am not satisfied that the Landlord in good faith plans to end this tenancy pursuant to Section 49.2 of the Act.

I accept the Sprinkler Permits detail system design for updates or changes to an existing system, however, the Landlord failed to present or raise this, nor did they provide supporting evidence or details to support their application for vacant possession based on such work.

Based on the above, I find the Landlord has not met their burden of proof under the Act due to insufficient evidence about the scope of work and that they require vacant possession of the rental units. I find it was the Landlord's responsibility to provide key evidence to support their application.

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

Conclusion

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 *Residential Tenancy Act*.

Dated: May 13, 2025

Residential Tenancy Branch