



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 24, 2025 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession pursuant to section 49.2(1) of the Act, which states:

Director's orders: renovations or repairs

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.

The Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony. No one attended for the Tenant.

The Landlord's Agent stated that they served the Proceeding Package and evidence to the Tenant by Canada Post Registered Mail on March 27, 2025. The Landlord provided a copy of the tracking number and proof of service in support. Pursuant to Sections 89 and 90 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act* and the Tenant is deemed served with the above mentioned documents 5 days later on April 1, 2025.

Issue to be Decided

- Has the landlord provided sufficient evidence to support that an order of possession should be granted 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's Agent stated that they were unsure as to when the tenancy started as it was "quite a few years ago". The Landlord's Agent stated that the Tenant is required to pay rent in the amount of \$735.00 due on the first day of each month. The Landlord's Agent stated that they think the Tenant paid a security deposit in the amount of \$325.00. The Landlord's Agent stated that there is no written tenancy agreement between the parties.

The Landlord's Agent stated that the building was constructed in 1969 and is in rough shape currently. The Landlord's Agent stated that the Landlord intends on remediating areas of the rental unit as it has formed mold in the bathroom and bedroom. The Landlord's Agent stated that the Landlord is uncertain how much material needs to be removed from the rental unit.

Furthermore, the Landlord has provided a quote outlining the proposed work which the Landlord intends to perform which includes;

Qty (hrs)	Description	Line Total
30	Demolition/removal/ : remove existing flooring, remove trim, remove toilet, sink, interior doors, closet doors.	1500

4	Remove and mark interior doors (x3), closet doors(x3), kitchen cabinet doors (multiple), for painting.		200
25	Mold remediation as necessary. Remove affected materials and replace with new (rough estimate only)		1250
16	Paint preparation: masking areas, cover and mask windows, cover and mask light fixtures, remove switch covers and socket covers.		800
12	Cut and prepare new trim for installation for entire suite.		600
20	Painting of suite with spray system; walls and ceiling. Prime coat (x2); topcoats(x2). Paint trim pieces. Paint interiors doors, kitchen cabinets, kitchen cabinet doors.		1000
6	Remove masking tape and coverings from paint spray.		300
20	Installation of new flooring in full suite (500sqft) Install new trim.		1000
5	Install interior, kitchen cabinet, and closet doors.		250
5	Disposal to transfer station (load and drive including dump fee)		250
-total	(Estimate does not include materials. All required materials are customers responsibility.)		
143hrs	(This is an estimate only. Unit must be vacant. It is not a 'fixed price' quotation.)		
Subtotal			\$7150
GST/PST			\$858
Total			\$8008

The Landlord's Agent stated that they do not require a permit for the proposed work as they are not moving any plumbing or electrical services. The Landlord's Agent stated that the rental unit must be vacant during the renovations given the extend of the work will likely take two months to complete.

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.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”. Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

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.

According to Policy Guideline

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. 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. Some examples of cosmetic renovations or repairs;

- 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.

After careful consideration of all the evidence before me, I find the landlord has provided insufficient evidence to demonstrate that the rental unit requires repairs, or that the repairs are so extensive that the only reasonable way to achieve the renovation requires the rental unit to be vacant. The quote provided by the Landlord refers to work that is primarily cosmetic, which is demonstrated in the fact that the Landlord does not require a permit for the proposed work.

I find that the Landlord provided insufficient evidence to demonstrate that the rental unit has mold, or that the removal of the mold requires the unit to be vacant. As such, I dismiss the Landlord's Application for an order of possession.

Conclusion

The landlord's application is dismissed. The tenancy will continue until it is ended in accordance with the Act.

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 09, 2025

Residential Tenancy Branch