

DECISION

Introduction

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

- Vacant possession of the rental unit to perform renovations or repairs under section 49.2 of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The tenant and their assistant acknowledged service of the Proceeding Package from the landlord and stated that they have no concerns regarding service. As a result, and as the tenant and their assistant appeared at the hearing ready to proceed, I therefore found the Proceeding Package sufficiently served for the purposes of the Act and the hearing proceeded as scheduled.

Service of Evidence

Although there was some initial confusion by the tenant and their assistant about what evidence had been served on the tenant, after going through the documentary evidence before me from the landlord, I was able to confirm that all the evidence before me from the landlord had been served on and received by the tenant in person on September 8, 2025. I therefore accepted it for consideration as the service date and timeline complied with the Act and Residential Tenancy Branch Rules of Procedure (Rules).

Although I was satisfied by the testimony of the tenant and their assistant, as well as a copy of an email before me from the tenant, that their evidence was sent to the landlord by email on September 30, 2025, the landlord denied receipt at the hearing. However, after confirming the email address used, and allowing the landlord an opportunity to search their email, they were able to locate and review this evidence during the hearing. I asked the landlord if they wished to request an adjournment to further review this evidence, and they declined, stating that they have looked at it and just wish to proceed with the hearing as scheduled. I advised the landlord that I would accept the tenant's documentary evidence and rely upon it in making my decision if we proceeded as scheduled, as there was a remedy (adjournment) to resolve any potential administrative unfairness concerns because of the method of service or the landlord's late receipt of the tenant's evidence, and they chose to proceed. As a result, I have accepted all evidence before me from both parties for consideration.

Issues to be Decided

Is the landlord entitled to vacant possession of the rental unit to perform renovations or repairs under section 49.2 of the Act?

Background and Evidence

I have reviewed all evidence accepted for consideration, including testimony, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began approximately 19-20 years ago, that it is currently periodic (month-to-month) in nature, and that rent in the amount of \$750.00 is due each month. There was no dispute between the parties that the upper portion of the home, which does not form part of the rental unit and is not subject to this tenancy agreement, has been vacant for some time since the occupant of that rental unit passed away, or that the upper unit is in the process of being renovated by the landlord.

The parties disagreed about whether the landlord has grounds to end the tenancy under section 49.2 of the Act. The tenant and their assistant alleged that this Application has not been filed under section 49.2 of the Act in good faith, as the reason the landlord wants possession of the rental unit is to sell the property. The tenant stated that when the landlord served them with the Proceeding Package, they told them that the tenancy was being ended so that they could sell the home in which it is located. As a result, the tenant and their assistant argued that the landlord wants vacant possession so the home can be prepared for sale, not because they landlord genuinely needs to complete renovations or repairs to prolong the use or life of the rental unit. They also called into question why vacant possession of the rental unit would be required if the renovations and repairs planned do not even require permits, and argued that the landlord is simply seeking to evict an elderly and disabled long-term tenant paying very low rent so that they can beautify the home for resale.

The landlord denied this stating that they may have mentioned potentially selling it at some point in the past but that is neither their current plan nor their reason for seeking an end to the tenancy under section 49.2 of the Act. The landlord stated that the home is old and everything is outdated and run down as it has been more than 20 years since they have done any renovations in the rental unit. The landlord stated that they are planning to completely update the interior of the rental unit including tubs, fixtures, lights, cabinetry, and flooring, which they are also in the process of doing upstairs. They stated that they will also need to take down the drop ceiling in the rental unit to access the floors upstairs, which are squeaky. The parties also disputed whether there was water damage from a previous incident, what that incident was, and when it occurred.

Considering the tenant's testimony about the sale of the property, I asked the landlord if they were planning to sell the property and if not, what their plans were for the property once renovations and repairs were completed. The landlord responded that they do not know what they are going to do with it but have money now to do renovations and

repairs, which might not be the case in the future. I asked the landlord if the items they intended to replace were functional and they stated that they were not sure, as they had not inspected the rental unit for this purpose.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party bearing the burden of proof must provide sufficient evidence over and above their testimony and submissions to establish their claim. In this case, the landlord bears the burden of proof on a balance of probabilities in relation to their claim that they are entitled under section 49.2 of the Act to vacant possession of the rental unit.

Is the landlord entitled to vacant possession of the rental unit to perform renovations or repairs under section 49.2 of the Act?

Section 49.2 of the Act states that subject to the tenant's right to compensation under section 51.4 of the Act and any prescribed conditions, a landlord may make an Application 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; and
- d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

For the reasons set out below I find that the landlord has failed to satisfy me, on a balance of probabilities, that any of the above grounds have been met, let alone all the above. First, I will address the matter of good faith. The tenant alleged that the Application has not been filed in good faith and provided affirmed testimony that the landlord told them when they were served with the Proceeding Package that they were going to be evicted so that the home could be renovated and sold. Although the landlord denied this, I asked them what their plans for the rental unit and the property at large were after the renovations and they stated that they were not sure what they were going to do with it. I find this wholly unbelievable. It was undisputed that the landlord is undertaking extensive renovations in the currently vacant upper unit of the home, and is now seeking to end a 19-20+ year tenancy for renovations they allege are so extensive that the only way to complete them is to end this tenancy. I simply do not find it credible at all that the landlord is planning to renovate the property so extensively, expelling the only paying occupant in the process, all while having no idea what their plans are for the property once renovated.

As a result, I find the tenant's account of what they were told by the landlord when served with the Proceeding Package more credible. I therefore find on a balance of probabilities that this Application has not been filed in good faith.

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 the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus 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).

As set out in Residential Tenancy Policy Guideline (Guideline) 2B, good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It also means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant as set out in section 32(1) of the Act.

I am satisfied based on the tenant's testimony, and the documentary evidence before me, that the landlord is seeking to end this tenancy to prepare the property for sale. Not because the property simply needs updating and the only reasonable way to accomplish that updating is to end the tenancy. By the landlord's own admission at the hearing, the last time they completed any substantial work or repairs in the rental unit was more than 20 years ago and they have not even inspected it for the purpose of assessing the condition of the things they plan to replace. The landlord cannot ignore or delay their obligations under section 32(1) of the Act for 19-20 years, then expect to be able to evict their tenant to either complete cosmetic upgrades or complete necessary repairs or renovations that ought to reasonably have been undertaken by the landlord throughout the tenancy. They also cannot evict the tenant to complete renovations or repairs for the purpose of making the rental unit more attractive to either a purchaser or prospective future occupants. As a result, I find that this Application has not been filed in good faith. Given this finding it is not necessary for me to assess the remaining criteria set out under section 49.2 of the Act to adjudicate this Application. However, I am not prohibited by law or the principles of administrative fairness from doing so. As a result, and as I find it relevant contextually, I have chosen to do so.

Second, I am not satisfied by the landlord that the rental unit needs to be vacant for the renovations or repairs allegedly required to be completed. In Guideline 2B it states that 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.

All the renovations and repairs mentioned by the landlord at the hearing fall under the above noted categories. While I acknowledge that electricity, breakers, and water may need to be shut off for some of the work to be completed, I am satisfied that this can be done incrementally for short periods as the necessary work is completed.

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. As set out in Guideline 2B, renovations or repairs that require the rental unit to be vacant might 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.

I am not satisfied by the landlord that either of the above apply here. If a high rise can be re-piped with only temporary and incremental water shut offs and without the need to evict all occupants, surely the landlord of this rental unit can replace things like a tub, faucets, and electrical fixtures without needing to evict the tenant. I make a similar finding about things like flooring, cabinetry, windows, and drop ceiling tiles. While it may be more convenient and cost effective for the landlord to do these things while the rental unit is vacant, mere convenience and financial considerations are not enough to warrant an eviction for the completion of renovations or repairs under section 49.2 of the Act. Further to this, nothing submitted by the landlord satisfied me that the scope of work or any safety concerns that may result, are such that the rental unit must, as a matter of course and safety, be vacant for them to occur. As I am not satisfied that vacant possession is required at all, I find it unnecessary to address section 49.2(d) of the Act.

Third, I am not satisfied by the landlord that 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. The tenant and their assistant argued that they are not, and the landlord admitted at the hearing that they have not inspected the rental unit for the purpose of ascertaining whether the things they wish to replace are functional or in need of replacement for any reason other than cosmetics. Although they estimated that they last did work in the unit more than 20 years ago, they presented no evidence or testimony about the state of functionality or repair of the vast majority of items they intend to replace or repair, other than to say they are worn down and old, and no information was

presented or arguments made about whether any of these items are at or past their useful life in accordance with Guideline 40 or another reputable source (such as the manufacturer).

Finally, in addition to all the above, I find the documentary evidence submitted by the landlord in support of their Application to be woefully insufficient. It consists only of two emails, both of which appear to contain only excerpts of general information obtained from either the municipality or other sources. The first email contains general information about whether permits are likely to be required or not based on the nature and scope of work. This email does not appear to have come from the municipality as it is from the landlord to the landlord. There is also no indication where this information is from, and whether it even relates to the municipality in which the rental unit is located and appears to have been cut and pasted from some publicly available source. The second contains general information about the health and safety risks and daily living challenges posed by renovations. Again, there is no indication in this email where this information was obtained from, however, at the hearing the landlord stated it was from WCB. This email does not appear to have come from WCB, as it is from the landlord to the landlord, and looks like it contains information simply cut and pasted from an unknown source.

Regardless of my findings above, I find this evidence to be wholly insufficient, even on an uncontested Application, which this is not, of supporting a reasonable finding that the landlord is entitled to vacant possession of the rental unit under section 49.2 of the Act. It is far too generic, and there is no way for me to know with any degree of certainty where this information was even obtained, and therefore whether it is reliable or applicable to this municipality, rental unit, or situation.

There is no question in my mind that this is exactly the type of eviction the legislature intended to prevent when they made legislative changes to the Act requiring landlords to seek an Order from the Branch under section 49.2 of the Act to gain vacant possession for renovations.

As a result of the above, I dismiss the landlord's Application for vacant possession of the rental unit under section 49.2 of the Act without leave to reapply. While this is not an indefinite ban on future Applications by the landlord under section 49.2 of the Act, they are forewarned that they cannot avoid this decision by simply reapplying to the Branch. To constitute a genuinely new Application on new grounds under section 49.2 of the Act, there must therefore be a significant change in circumstances, a significant passage of time, or both, such that any subsequent Application could not reasonably be considered to constitute an attempt to re-argue matters already conclusively decided as part of this decision or an attempt to avoid this decision.

Conclusion

The landlord's Application for vacant possession of the rental unit under section 49.2 of the Act is dismissed without leave to reapply. I therefore order that this tenancy continue in full force and effect until it is lawfully ended in accordance with the Act. If the landlord

wishes to undertake the stated renovations or repairs, which is their right, they must do so without ending this tenancy and in such a way that it does not breach any other rights of the tenant under the Act or tenancy agreement.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: October 9, 2025

Residential Tenancy Branch