



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) for 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.

A co-owner, TK (owner) of the named landlord company, tenant agent WB (agent) and tenants MB, MB and RB attended the teleconference hearing. 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 oral testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed that they had received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. The tenants confirmed that they did not serve any documentary evidence on the landlord in response to this application. Given the above, I find the tenants were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The owner had originally applied against another tenant, DA (other tenant DA) in addition to the tenants before me. The owner explained that they requested to remove other tenant DA as they reached a mutually settled agreement and other tenant DA has already vacated the rental building. As a result, I have removed other tenant DA from this application and will not reference other tenant DA further in this Decision.

In addition to the above, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

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

A one-year fixed term tenancy began on February 1, 2016 and converted to a month-to-month tenancy after February 2017. The landlord has applied for an order of possession pursuant to section 49.2(1) of the Act.

The owner testified that they purchased the rental building as of March 1, 2021 and that it has a total of 4 units and that the tenants in this matter are the only ones who remain in the building. The owner testified that the building was built in 1971 and that upon doing some repairs in the building, it was discovered that asbestos and lead paint exist in all units and that the current wiring is aluminum, which needs to be changed to copper.

The owner described the scope of work involved to include removing all cabinets, flooring, appliances, and to mask up all drywall due to asbestos and lead paint. In

addition, any plumbing issues that are discovered, will also be addressed during the professional abatement and renovations.

The landlord described the work required in the application as follows:

Remove all asbestos & lead drywall and taking the unit to the studs. From there doing a full rewire of the unit from aluminum wiring to copper. From our hazardous material report the unit has to have professional abatement done to remove the drywall. We are in jeopardy of not getting insurance on the building as 8 insurance carriers denied us last year and need to ensure that going forward that we can get insurance on the building. Also our electrician worries about the current wiring.

[reproduced as written]

The landlord presented 2 permits during the hearing and copies of both were included in evidence. The electrical permit is dated January 20, 2022 and the asbestos permit is dated February 1, 2022. The owner stated that they first became aware of the asbestos in March 2022, when working on a different unit.

Both parties agree that holes were made in the walls of the rental unit to provide for inspection of what is behind the rental unit walls. The owner provided a report that stated that there is asbestos behind the walls and lead paint on the walls in the Hazardous Materials Report (Report) dated January 2022, submitted in evidence. The results of the Report confirm there is asbestos and lead paint in the rental unit.

The owner stated that they are doing this work in good faith and not to displace any tenants. The estimated time frame is between 3 and 4 months and that is based on the availability of trades. The ballpark costs provided by the owner is \$100,000.00 per unit so the entire building ballpark cost is \$400,000.00. The owner stated that due to the high cost involved, they are unable to re-rent at the same rent after spending nearly a half a million dollars and would have to list the units at market rent once the work is completed to offset the large capital expenditure.

The owner stated that they have been very good landlords and have tried to fix anything that needs repair very quickly, which the tenants did not deny. The owner also stated that the electrical wiring is outdated and required a change from aluminum to copper as the appliances today use far more load than in the past and the aluminum wiring can't keep up with the demand for electricity.

The indicated that after hearing from the owner, they now have a good understanding of why the application was made. The tenants stated through their interpreter that they are refugees from Syria and have been in the rental unit since coming to Canada. The interpreter stated that the husband is “disabled” and the mother is needing a hip replacement soon, the latter of which had to be rescheduled to the potential of moving. In addition, the interpreter stated that their son has obesity issues and that there are 2 other children in their family. The interpreter stated that they can not afford more rent and have been on the BC Housing waiting list for 3 years now.

The tenants asked about potential outcomes from this decision, which were explained to the tenants during the hearing.

The owner stated that it is the intention of the landlord that this work will result in the rental building being fit for occupancy for another 58 years.

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.

[emphasis added]

After careful consideration of all the evidence before me, I find the landlord has provided sufficient evidence that all four parts named above from A to D have been met and that the tenancy must end as a result of the Hazardous Material Report and the current asbestos and lead paint in the rental unit.

While I understand this will create a hardship on the tenants, the Act does not contain a hardship clause that would prevent an order of possession from being issued. **The landlord is required to compensate the tenants as per section 51.4 of the Act.**

Given the above, section 49.2 (3) and 49.2 (4) of the Act apply and states:

49.2(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) An order granted under this section must have an effective date that is
(a) not earlier than 4 months after the date the order is made,
(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.
[emphasis added]

As this tenancy is now a month-to-month tenancy, and I am satisfied that the landlord must perform this work that will take 3 to 4 months and that documents support that vacant possession is required to do the work due to asbestos and lead paint to be abated by a professional company as confirmed in the Report, I grant the landlord an order of possession effective **September 30, 2022 at 1:00 p.m.**

The landlord must serve a copy of the attached Order of Possession on the tenants before the end of May 2022.

Conclusion

The landlord's application is successful.

The tenancy must end due to renovations related to asbestos and lead paint. The landlord has been granted an order of possession effective September 30, 2022 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to both parties as indicated above. The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 18, 2022

Residential Tenancy Branch