



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Golden Centurey Investments Co.
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **PFR**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- an order of possession to perform repairs or renovations pursuant to section 49.2 of the Act

Counsel DN for the landlord appeared, the tenant did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Counsel for the landlord confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11.

Counsel for the landlord confirmed that the dispute notice and materials were sent to the tenant by registered mail on October 27, 2022. She produced proof of service in evidence. The tenant is deemed served on November 1, 2022, pursuant to sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for repairs or renovations?

Background and Evidence

The tenancy commenced June 1, 2013, for a one-year fixed term and continued month to month thereafter. Rent is \$2,000.00 per month due on the first of the month and the

landlord currently holds a security deposit of \$1,000.00. The tenant still lives in the rental unit.

Counsel for the landlord stated that the rental unit is a single-family home and must be renovated due to its poor condition. The renovations are extensive and require both the water and electricity to be shut down for 4-6 weeks. Some exterior walls also need to be removed. A letter from an architect was produced in evidence in support of the extensive nature of the renovations.

Counsel for the landlord stated the tenant is welcome to return to the renovated rental unit once complete. The tenant was not in attendance and did not provide evidence on this point.

There is a building permit in place for the renovation. The building permit was extended from September 13, 2021, and currently expires March 13, 2023. The letter from the architect submitted in evidence states that the renovations must be complete by that time. Counsel for the landlord opined that they may not be able to renew the permit but provided no supporting evidence for her position. Counsel for the landlord also submitted that there was a previous application for an order of possession before the RTB for this matter which was dismissed as counsel attended the hearing late.

Analysis

Section 49.2 of the Act 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.

(2)In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(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.

RTB Policy Guideline 28 states in part:

When applying to end a tenancy under section 49.2 of the RTA, a landlord must have in place all the permits and approvals required by law to carry out the renovations or repairs that require vacancy before submitting their application.

The required permits must have been valid at the time the Notice to End Tenancy was given or the application to end the tenancy was made. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator.

The notice in this instance was valid prior to the issuance of the permit and complies with the RTB Policy Guidelines. However, the Act requires that a 4-month notice from the date the order is made under section 49.2 be given to the tenant. The 4-month notice must also have an effective date not earlier than the date before rent is normally due. Rent is due on the first of the month. The language of the Act is mandatory, therefore if the landlord establishes the conditions are met, the earliest a permit can issue is April 30, 2023.

I find that the landlord has established that this is a required renovation, it is extensive and will cause the rental unit to be uninhabitable during the renovation period. The lack of

electricity, water, and the removal of some exterior walls makes the rental unit uninhabitable. The landlord also has a valid building permit for the rental unit which expires March 13, 2023.

The language of the Act requires a four month notice period, and further states that the earliest effective date must be the date before monthly rent is due. As rent is due on the first of every month, the earliest date an order of possession can issue is March 31, 2023.

The landlord's application is granted.

Conclusion

The landlord is granted an order of possession which will be effective on 1:00 pm March 31, 2023. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: December 14, 2022

Residential Tenancy Branch