

DECISION

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") dated May 11, 2023, seeking vacant possession of the rental unit to perform renovations or repairs.

Procedural History

I conducted the participatory hearing for this matter on September 7, 2023. At the conclusion of the hearing, the matter was adjourned to written submissions to allow the Tenant the opportunity to review and respond to evidence from the Landlord.

I requested the Landlord provide additional evidence to support their application, including inspection reports for the rental property; written confirmation from an authority stating a building permit is not required; and timelines explaining the scope of the renovation. I allowed the Tenant to provide written submissions in response to any additional information provided by the Landlord.

I have reviewed all written submissions and evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to an order of possession to perform renovations or repairs, pursuant to section 49.2 of the Act?

Background and Evidence

The Landlord purchased the rental property in mid-2021. The parties say the rental property was built in the 1950's and converted to four separate units sometime thereafter. The Tenants named in the application have occupied two of the four rental units for over ten years each.

The Landlord provided their purchase inspection report dated May 20, 2021 as evidence of the state of the rental property and required repairs.

The Landlord says they began renovations on one of the vacant units, but they discovered asbestos and had to stop renovations until the asbestos is remediated. The Landlord says asbestos was found in the attic and wall insulation.

The Landlord provided an asbestos bulk sample report which indicates 1% asbestos per layer in the vermiculite insulation. The location is listed as "attic, insulation." A sample of the vinyl floor tile, cement levelling compound, and adhesive found no asbestos minerals detected in the flooring throughout the building.

The Landlord has provided a letter from a hazard remediation company estimating it will take two weeks for asbestos abatement during which time they would seal off the premises, requiring the entire building to be vacant because the insulation is present throughout the building. The company confirms that a permit is not required for the removal of hazardous materials.

The Landlord says they must also replace the main water valve to the building because it cannot currently be shut off in the event of a leak, flood, or emergency. The main shut off valve is located inside a manhole. The Landlord says that means it will take longer to replace because access must be arranged with the city. The plumbing company requires the water shut off for an entire week.

The Landlord provided emails from the plumbing company stating that they would require the rental units to be empty and they will need the main water valve shut off for their entire estimated work period of three to four weeks. The plumbing company says permits are not required.

In a subsequent letter, the plumbing company estimated two to three weeks to do the work, and they said they would like to see main water shut off one week prior while all parts are ordered. They estimate one week to replace toilets and hot water tanks, and repair faucets for all 4 units, replacing or repairing fixtures in the same location with existing connections. They say the main water will be shut down for a period of time, but the Landlord will not need to contact the city about shutting off the water.

The Landlord says the units must be renovated because they are currently unliveable due to mold and sections of rotted subfloors. The Landlord plans to install bathroom and kitchen fans and new flooring as part of the renovation.

The Landlord estimates 12 to 14 weeks for required renovations. After the asbestos remediation and replacing the main water valve, the Landlord explains the remaining scope of work as follows:

- Mold & Mold Damage Remediation: 1 week
- Hot Water Tanks (2), Toilet replacements (4), Kitchen Faucet Repair (3), Bathroom Faucets (3), Tub Repair (1): 7 work days
- Drywall & ceiling drywall rot repair and patch 3 units: 4 days

- Bathroom fans (4) Stove fans (2) installation for ventilation and mold (installed through subfloor) 4 days
- Subfloor and flooring rot repair, baseboard removal and new vinyl flooring installation (3 units): 3 weeks
- Broken glass reglazing/windowsill repair: 2 days
- Wall smoke soot removal, primer and paint (3 units): 7 workdays

Analysis

The Act section 49.2(1) provides that a Landlord may make an application for dispute resolution requesting an order to end a tenancy, and an order granting a Landlord possession of a rental unit, if **all** of the following circumstances 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) Permits

I accept the Landlord intends to renovate the rental unit. I accept the evidence from the Landlord that permits are not required for the renovations or repairs, based on the written confirmation from the hazard remediation company and the plumbing company.

(b) Vacancy required

Given the hazardous nature of asbestos, and that it was found in the attic insulation as well as the wall insulation throughout the building, I accept that the remediation company requires some period of vacancy.

However, I am not satisfied as to why the Landlord must remove insulation in any areas of the building other than the attic or where other venting is being installed. If the asbestos remediation was limited to areas that were necessary to allow for required venting or necessary repairs, the vacancy required should be shortened from the two weeks estimated.

The Landlord has not provided any evidence or information to support a large-scale asbestos remediation. The Landlord confirmed in their testimony that the nature of the

plumbing repairs required in the building are relatively minor and mostly to do with fixtures and fittings rather than re-piping any areas of the building.

Considering the nature of the plumbing repairs and renovations, I do not accept that the plumbing company requires the rental units to be vacant to replace fixtures and repair leaks.

The second letter from the plumbing company does not say the water must be shut off for the duration of repairs. Many of the repairs are minor, and in the absence of evidence to the contrary, I find it reasonable to assume water could be shut off while the work is being done and back on each evening.

I accept that the essential service, water, may be shut off for a certain length of time to replace the main water valve. However, the Landlord has not supplied a work order, quote, estimate, or contract to explain the required length of time for vacancy in that regard. I am not satisfied that the water must be shut off for an entire week while waiting for the main water shut off valve.

I find the Landlord has established a requirement for vacant possession for asbestos abatement of an undetermined period.

(c) Renovations are necessary

I accept that the renovations proposed by the Landlord are necessary to sustain the life of the rental building.

I understand the contractors performing the renovations will not be able to access the attic to install required bathroom venting until the asbestos is remediated.

(d) Whether tenancy must end

If the renovations or repairs that require vacancy can be completed within 45 days or less and the Tenant is willing to make alternative living arrangements for the period of time vacancy is required and provide the Landlord with the necessary access to carry out the renovations or repairs, then the tenancy agreement should not need to end to achieve the necessary vacancy.

I presume the Tenants are willing to accommodate repairs and renovations in the interest of continuing their tenancy.

In summary, I do not find it necessary to end the tenancy agreement at this time because the Landlord has not sufficiently established the vacancy requirement, and that the Tenants are not willing to accommodate the vacancy required to complete renovations.

Conclusion

I dismiss the Landlord's application, with leave to reapply. If the Tenants are unwilling or unable to relocate elsewhere during completion of the intensive work period requiring vacancy, the Landlord may re-apply for an order of possession.

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: October 5, 2023

Residential Tenancy Branch