



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PFR

Introduction

On June 7, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order ending two tenancy’s and for an order of possession for the rental unit in order to perform renovations or repairs that require the rental unit to be vacant. The matter was set for a conference call hearing.

The Landlord and three Tenants attended the hearing and were each affirmed to be truthful in their testimony. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process.

The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Do the tenancies need to end in order for the Landlord to perform renovations or repairs that require the rental unit to be vacant?

Background and Evidence

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

The Landlord testified that it is their intent to renovate the rental unit from two units to three, which would create a separate third unit that the Landlord would use as a home office. The Landlord submitted a building permit and building plans into documentary evidence.

The Landlord submitted that they have been struggling financially and that they decided to remove a bedroom from the main 4-bedroom unit and convert it to an office, so they can use it for personal purposes and save money. The Landlord also submitted that they were notified since the house was built in 2002, the soundproofing would need to be updated during the renovation.

The Tenants submitted that the Landlord has made several attempts to raise the rent above the allowable amount and failed. The Tenants testified that the house does not require renovations.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49.2(1) of the *Act* provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, for renovations or repairs, stating the following:

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 Residential Tenancy Policy Guideline# 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, provides further guidance, stating the following:

“B. PERMITS AND APPROVALS REQUIRED BY LAW

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.**”

I have reviewed the permit submitted into evidence by the Landlord and noted that this permit is dated July 17, 2023. I have also reviewed the Landlord’s application for these proceedings, which records that the Landlord submitted their application for these proceedings on June 7, 2023, 30 days before their permit was issued.

I find that the Landlord was premature in submitting their application for an order to end these tenancies before their work permit had been granted. Accordingly, I find that the Landlord’s application fails as they did not have the required approved work permit before filing their application.

Additionally, the Landlord indicated that it is their intent to build a separate third suite in the rental unit, which was demonstrated by the Landlord in the building plans they submitted into documentary evidence during the hearing.

During my review of the Landlord’s building plans and building permit dated July 17, 2023, I noted the following:

Permit Type: **SINGLE FAMILY DWELLING - 6 ADD-ALT**

Description: This permit has been issued for the construction of Alteration/Repair to an existing Single Family Dwelling with a secondary suite.

I have reviewed this entire document and I find that the building permit issued by the municipal authority makes no mention of an approval for the creation of a third suite in the rental property.

The Residential Tenancy Policy Guideline# 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, goes on to state the following:

“The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion.

.....

If a required permit cannot be issued because other conditions must first be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to issuing a Notice to End Tenancy or applying to the RTB.

If permits are not required for the change in use or for the renovations or repairs, a landlord must provide evidence such as written confirmation from a municipal or provincial authority stating permits are not required or a report from a qualified engineer or certified tradesperson confirming permits are not required.”

I have reviewed the totality of the submission made by the Landlord during these proceedings, including all of their documentary evidence, and I find that there is no evidence before me to show that the municipal authority, that issued the Landlord's permit, does not require the Landlord to obtain a permit to create a third suite in the rental property.

After consideration of the evidence before me, I also find that the Landlord has provided insufficient evidence to show that they have all the necessary permits and approvals required by law to carry out the renovations or repairs that they had testified to during these proceedings.

For the above reasons, I find that the Landlord's application for an order ending these tenancies and for an order of possession for the rental property in order to perform renovations or repairs that require the rental unit to be vacant is not successful and is dismissed.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

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 16, 2023

Residential Tenancy Branch