

DECISION

Introduction

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

- Cancellation of the landlord's Four Month Notice to End Tenancy Issued for Demolition, or Conversion of Rental Unit to Another Use (the Four Month Notice) under section 49 of the Act
- An order for the landlord to provide services or facilities required by law under section 27 of the Act
- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

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

- An order for vacant possession of the rental unit to perform renovations or repairs

Preliminary Issues

- Update Rental Address

Added "Basement" to rental address to distinguish from Landlords' address.

- Tenant's Application to Dispute Four Month Notice

I was advised that the Tenant was not served with an RTB Four Month Notice, as such it is not necessary for me to decide if the Four Month Notice is valid. The application to dispute a four month notice is dismissed, with leave to reapply.

The following issues are dismissed with leave to reapply:

- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do

so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application for vacant possession, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues 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 tenancy agreement began April 1, 2019, with a monthly rent of \$750.00, due on the first of each month and a damage deposit of \$300.00. The Landlords occupy the upper level of the rental unit and the Tenant occupies the basement level of the rental unit (collectively, the "Residence").

The Landlords advised this Residence was built in 1996 and the plumbing material used throughout the rental unit is Polybutylene plumbing ("Poly-B"). The Landlords argued that Poly-B is banned and removed as an acceptable plumbing material since it is prone to failure without warning. Since their Residence has Poly-B, the Landlords' insurance company has raised their premium and advised they may not be eligible for insurance in the future. The Landlords want to replace the Poly-B material and received a building permit, which was submitted into evidence. The permit has a condition that the Landlords must deactivate the illegal secondary suite, that the Tenant occupies. The previous owners of the Residence built the rental unit illegally, which the Landlords were not aware of.

The Landlords argued the work will take several months but were unable to provide a specific timeline. They also argued the work will be extensive and will involve cutting into the ceiling and walls throughout the Residence to replace the plumbing material. Afterwards, the walls and ceiling will need to be re-plastered and painted. Additionally, the water will be shut off throughout the rental unit when the plumbing is replaced. The Landlords have not hired anyone to do the work because they did not know if they would be granted vacant possession or when the work could start. They have spoken with their neighbors who have recently replaced the Poly-B in their homes and received references. Additionally, as mentioned above they are required to deactivate the rental unit the Tenant currently occupies.

The Tenant argued they originally agreed to vacate the rental unit when they received an email giving 12 months notice to vacate so the plumbing could be replaced. However, the Tenant argued the situation has gotten worse and they feel harassed by the Landlords. The Tenant does not believe the Landlords will make the repairs or that the rental unit needs to be vacant. The Tenant argued they have now received 4 or 5 notices from the Landlord. The notices the Tenant is referring to are letters from the Landlords regarding negotiations and a One-Month Notice for Cause.

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 Landlords intend to replace the Poly-B plumbing throughout the Residence.

According to *Residential Tenancy Branch Policy Guideline 2B (Policy 2B)*, permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit, and required permits must have been valid at the time the application to end the tenancy was made.

I find the Landlords have satisfied the permit requirement because they obtained a permit that covers replacing the Poly-B plumbing and have submitted it into evidence.

(b) Vacancy required

According to Policy 2B,

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.

Renovations or repairs that require the rental unit to be vacant could 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. ...

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.

Due to the nature and extent of the work, the rental unit must be vacant. The Landlords advised the intended work is invasive, as the walls and ceilings throughout the Residence will need to be cut open to get access to the plumbing in the rental unit and the Landlords' unit. Additionally, the plumbing work will involve water shut offs during the course of the work.

Furthermore, the permit requires the deactivation of the rental unit, which includes removal of the cooking facilities and deactivation of the range plug and wiring. Which means there would be no rental unit for the Tenant to occupy.

(c) Renovations are necessary

I accept that the renovations or repairs are necessary since Poly-B is no longer an approved plumbing material and prone to issues. While the plumbing has not currently failed the Landlords are being proactive in switching out the plumbing to prevent any malfunctioning of the Poly-B material. Additionally, the Residence was built in 1996 and still has the original plumbing material. RTB Policy Guideline 40 states the useful life of plumbing is up to 25 years. I find the renovation is necessary to sustain the use of the rental unit.

(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.

The renovation work includes cutting into the ceiling and walls, replacing the plumbing throughout the Residence, putting up gyprock and then the entire Residence will need to be painted. The Landlords provided an estimate of a couple of months to have the work completed.

Additionally, the permit is conditional on the Landlords deactivating the rental unit. Even if the Tenant was able to find temporary accommodation there would be no rental unit to return to after the renovations are completed.

Considering the above reasons, I am satisfied that all the consideration set out in section 49.2(1) of the Act apply. The Landlords' application to end the tenancy and receive an order of possession for the rental unit is granted. I grant the Landlords an Order of Possession effective on February 29, 2024, in accordance with section 49.2(4) of the Act.

Conclusion

The Landlords' request for an Order of Possession for the rental unit in order to perform renovations that require the rental unit to be vacant is granted. I grant the Landlords an Order of Possession effective on **February 29, 2024 at 1:00 PM**. The Landlords must serve the Tenant in accordance with the Act and as soon as possible,

The entirety of the Tenant's application is dismissed, with 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 Act.

Dated: October 18, 2023

Residential Tenancy Branch