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File No: 310043091

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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310043091

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenant,

Respondent

Regarding a rental unit at: s.22

Date of Hearing: November 23, 2021, by conference call.

Date of Decision: December 1, 2021

Attending:

For the Landlord: s.22

For the Tenant: s.22



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR, FFL

Introduction

On July 16, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant.

The matter was set for a conference call hearing. The Landlord and Tenant attended the conference call hearing.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

The parties confirmed that they have 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

- Is the Landlord entitled to end the tenancy due to renovations or repairs?

Background and Evidence

The Landlord and Tenant provided testimony that the tenancy began in July 1998 and is on a month-to-month basis. Rent in the amount of \$1,142.00 is to be paid to the Landlord by the first day of each month.

The Landlord provided testimony on the reasons why the tenancy must end. The Landlord stated that the rental unit is located in a multi-unit residential building containing 37 rental units and the building is close to 60 years old. The Landlord testified that because of the age of the building and because the useful life of building elements such as plumbing is past its useful life, every suite needs to be repaired /renovated.

The Landlord stated that they purchased the property four years ago and started a renovation program. The Landlord testified that they have renovated eight or nine other units on the residential property. The Landlord testified that they make every attempt to not kick tenants out and have offered other tenants other units located on the property.

The Landlord submitted that the condition of the rental unit at dispute is largely original and there is an issue with water leaking from the plumbing into the unit located below. The Landlord stated the plumbing has pin-hole leaks.

The Landlord testified that the rental unit requires the following renovation:

- Replacement of most drywall.
- Upgraded electrical panel and wiring.
- Re-piping of water and drainage.

The Landlord stated that he has all the permits required to complete the work and has a contractor and team ready. The Landlord provided copies of work permits issued from the City for construction, electrical work, and plumbing at the rental unit. I note that the work permits were issued prior to when the Landlord applied for dispute resolution.

The Landlord testified that the drywall taping, and ceiling texture coat contains asbestos, and the Landlord provided a report from an environmental health and safety consulting company who conducted an inspection of the unit on June 19, 2021 and found asbestos in the drywall taping compound and ceiling texture coat. The report provides an analysis summary showing asbestos located in the bathroom and kitchen areas. The report provides:

Asbestos containing materials must be removed prior to demolition activities in accordance with WorkSafeBC regulations and disposed of in accordance with BC Ministry of Environment.

The Landlord submitted that due to the age of the building, the drywall compound contains asbestos and lead based paint, and that need to remove the asbestos and paint according to WorkSafeBC regulations, continued occupancy of the rental unit is not possible.

The Landlord submitted that all plumbing fixtures, drains, and most of the supply lines in the unit are original and well past the end of their service life. The Landlord provided an email from a plumbing company dated July 16, 2021 that indicates the plumber attended the unit and recommends that the unit needs a complete re-piping of water and drainage piping. The Landlord provided a document setting out the maintenance records for the rental unit from May 2019 to September 2021. The document indicates 12 occasions where water from the unit was leaking below.

The Landlord submitted that all the wiring and the fuse box are original and that Tenants tampering of the fuses by putting a 20-amp fuse in a 15-amp circuit has created an unsafe situation. The Landlord stated that the existing wiring does not meet the needs of tenants and all their appliances. The Landlord stated the existing wiring is at risk for getting hot and the load trips breakers. The Landlord submits that the fuse box, wiring, outlets, and fixtures must be replaced to meet current building code and safety standards. The Landlord stated that all the wiring in the unit is being upgraded to 20-amp wiring. The Landlord provided a copy of a letter from an electrician dated October 16, 2021 which indicates the electrician inspected the unit and the wiring is original from the mid 1960's and the kitchen has two circuits, and the current electrical code requires 5 circuits. The electrician writes that the kitchen wiring needs to be replaced with 12-gauge wiring.

The Landlord stated that because of the presence of asbestos in the drywall, and al, the other work to be performed at the same time, the rental unit needs to be vacant.

The Landlord submitted that the Tenant removed most of the carpets from the unit without consultation or approval from the Landlord. The Landlord submits that the exposed sub-flooring also needs to be repaired and replaced before new carpet can be installed.

The Landlord testified that the renovation work will cost between \$50,000 to \$60,000 and that based on similar work he has completed on dozens of other units he owns in the city, the renovations /repairs have taken up to 4 months. The Landlord stated that the asbestos removal and the city inspections of the work adds more time to complete the work. The Landlord stated that he used to be able to complete this type of work in two months.

The Landlord testified that in June 2021 they offered another rental unit with the same layout to the Tenant at a reduced rent amount which is lower than market rent. The Landlord indicates the Tenant rejected the offer.

In reply, The Tenant submits that the Landlord is trying to end the tenancy so that he can turn over the unit and charge the next tenant more than double the current rent.

The Tenant testified that he has provided a submission from a building management expert that the scope of repair does not require long term vacancy and can be completed without ending the tenancy. The Tenant stated that he is willing to temporarily re-locate in order to maintain the tenancy.

The letter from the Tenant's expert in regard to plumbing indicates that he is a facilities manager for seniors rental housing. He submits that in 2013, 2017, and 2021 re-piping of numerous senior housing suites was completed and that they never had to evict any tenants for re-piping purposes or any other renovation projects. He submits that asbestos abatement took five hours for one day and that the water was turned back on at the end of each day. He submits that the work lasted for an average of 10 business days. He submits that under no circumstances should a tenant be renovicted for work carried out similar to what is outlined in his submission.

The Tenant provided a letter dated September 17, 2021 from an electrician who indicates he has 28 years of experience. The letter indicates that he inspected the electrical wiring in the kitchen and bathroom as well as the fuse box. His letter provides that the fuse box needs to be replaced, but the kitchen and bathroom electrical does not need to be rewired as it meets code and safety requirements. He submits that re-wiring the unit should take two days to complete. He submits that the time needed to complete the renovation work is 2-3 weeks at most.

The Tenant stated the carpet he removed was very old and that the replacement of flooring can take place one room at a time while he occupies the unit. The Tenant provided a letter from a flooring contractor which states that he inspected the unit and that there is original carpeting and flooring in the unit. The contractor writes that this repair can be done while the Tenant still occupies the unit.

The Tenant pointed out that the Landlord's report from the environmental health and safety consulting company indicates the scope of the asbestos issue is limited to the kitchen and bathroom.

The Tenant testified that approximately 10 to 15 years ago the previous Landlord ripped out his bathtub and the surrounding area trying to locate a leak coming from that area.

Analysis

Section 49.2 (1) of the Act provides that 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 Act provides that 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.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that “vacant” means “empty”.

Generally, extensive renovations or repairs will be required before a rental unit needs to be empty.

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).*

Is it Necessary to End the Tenancy Agreement?

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

On the other hand, in Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides:

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 right of first refusal (see below) contemplates new tenancy agreements being provided at least 45 days before the renovations or repairs that ended the tenancy are completed. If the timeframe is longer than 45 days, it may be unreasonable for the tenancy agreement to continue even if the tenants are willing to make alternative living arrangements. The longer the timeframe, the less likely the tenant can be considered to retain the rights of possession and use contemplated for tenancy agreements, as established in the RTA, and for which the tenant pays rent.

Right of First Refusal

If the tenancy is being ended under section 49.2 and the residential property has 5 or more rental units, the tenant is entitled to enter into a new tenancy agreement for the rental unit that takes effect once renovations or repairs are complete. The tenant must give the landlord notice that they want to be able to exercise this right by completing form #RTB-28 "Tenant Notice: Exercising Right of First Refusal". The tenant must give the completed form to the landlord before vacating the rental unit.

If the tenant does not exercise their right of first refusal by entering into a new tenancy agreement on or before the availability date set out in the "45 Day Notice of Availability" form, the tenant has no further rights respecting the rental unit. The landlord may then rent it to another tenant.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I have considered the issues contained in section 49.1(2) of the Act as follows:

Good Faith

I find that the Landlord has an obligation under the Act to provide and maintain a property in a state of decoration and repair that complies with health safety and housing standards required by law and make it suitable for occupation by a tenant.

I accept the Landlord's testimony that the rental property is nearly 60 years old. I accept the Landlord's testimony that some of the building elements in the rental unit are

past their useful life and need to be replaced or repaired. I take guidance from the Tenancy Branch Policy Guideline # 40 Useful Life of Building Elements which provides the useful life of building elements in years. The Guideline provides the following information:

- Useful life of drywall is 20 years
- Useful life of Panel and wiring is 15 years
- Useful life for Re-wiring is 25 years
- Useful life of Electrical is 15 years
- Useful life of Plumbing fixtures is 10 years
- Useful life of Sanitary systems is 25 years

I accept the Landlord's evidence that he has all the permits in place to complete the work and I find that the Landlord had the permits prior to applying for dispute resolution to end the tenancy.

I accept the Landlord's evidence that he has been dealing with leaks coming from the Tenant's unit and this is costly and needs to be repaired. The Tenant's testimony that there was a possible leak in his bathroom 10 -15 years ago and the Landlords maintenance ledger supports that the rental unit has old plumbing beyond its useful life that is in need of repair.

With respect to the Tenant's evidence from the electrician, I note that the letter does not provide any information on the age of the wiring, the life expectancy of the electrical wiring, or its capacity to handle 20 amps and the current need of occupants.

I find that the electrical wiring in the unit is nearly 60 years old and I accept the policy guideline that the useful life of panel-wiring is 15 years and re-wiring is 25 years. I also note that the Landlord plans to upgrade the wiring to better handle increased loads and reduce risk.

I find that repairs are necessary to deal with existing plumbing and electrical issues in the unit and also to meet his obligations to provide and maintain the property in accordance with section 32 of the Act.

The current owner purchased the residential property four years ago and started renovating / maintaining the rental units meeting obligations under section 32 of the Act. I find that the Landlord has a good faith intention to repair and renovate the rental unit. I acknowledge that if this tenancy ends, and even if the Tenant exercises his first right of refusal, the Landlord will be at liberty to rent the unit out to him at market rent. I find that

due to the issues present in the unit, a motivation of receiving a higher rent is not the only reason that the Landlord is performing the repairs/ and renovations in the unit. I note that the Landlord stated they do not want to end tenancies and I note the Landlord offered the Tenant another rental unit at lower than market rent. The Landlord also stated in the hearing that he will honor the previous offer of offering another rental unit at lower than market rent.

Is Vacancy Required

I have considered whether or not the renovations require the rental unit to be vacant.

I accept the Landlord's evidence that asbestos was found in the drywall tape compound and ceiling texture coat. With respect to the Tenant's submission that asbestos was only found in the kitchen and bathroom, the Landlord testified he is removing most of the drywall in the unit. I find that the presence and removal of asbestos in the kitchen and bathroom and the resulting dust would require that the entire rental unit was vacant for the period of asbestos remediation. I find it would be unsafe to occupy the unit.

I have considered the scope of all the renovations / repairs and I note that all the plumbing in the unit, and all the electrical wiring, and flooring in the unit are being replaced which requires the drywall to be removed on all the affected ceilings and walls. This work includes removal and replacement of plumbing fixtures, including sinks, toilets, and bathtub.

I note that the Landlord is making all these repairs / renovations at the same time and I find that this work will result in a prolonged loss of services and facilities essential for the unit to be habitable.

Does the Tenancy Need to End?

I have considered if the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

The Landlord provided affirmed testimony that the asbestos removal and other work would take two months or more to complete. The Landlord testified that he bases this timeline on his experience renovating eight other units on the property and has also renovated other rental units in the city.

The Tenant provided letters with opinions that the asbestos removal would take one day, and the other work could be completed in 2-3 weeks.

The evidence before me on this issue of how long the work should take is conflicting. The Landlord provided affirmed testimony that he has completed the same work on eight other units at the rental property and it took between 2- 4 months. The Tenant provided a letter dated November 8, 2021 from a facilities manager and a letter dated September 17, 2021 from an electrician stating their opinions that the work should take from ten business days to 2- 3 weeks at most.

The Landlord provided direct testimony regarding the timeframe to complete the work and the facility manager and electrician did not attend the hearing to provide affirmed testimony. The letter from the facility manager is silent on whether he inspected the rental unit.

After considering the evidence before me, I find that the repairs and renovations are substantial and when considered objectively will require significant time to complete. Based on the amount of work to be completed, it does not seem reasonable that the Landlord could have all this work done in two to three weeks. Completion of the work would depend on many factors such as how many qualified tradespeople were working on the remediation, re-wiring, re-plumbing, re- drywalling, re-painting, flooring, and installation of cabinets, toilets, sinks and tubs and also their availability to attend the unit to perform the required work.

I find that the Landlord provided the better evidence that the renovations and repair work will require 2 - 4 months to complete.

I have considered the evidence before me and I am satisfied that all the considerations set out in section 49.2(1) of the Act apply. The Landlord's application to end the tenancy and receive an order of possession for the rental unit is granted.

I grant the Landlord an order of possession for the rental unit effective April 30, 2022.

The Tenant has a right of first refusal and must give the Landlord notice that they want to exercise this right by completing form #RTB-28 and giving the completed form to the Landlord before vacating the rental unit.

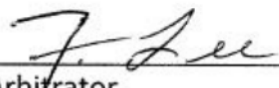
Conclusion

The Landlord's request for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant is granted.

I grant the Landlord an order of possession effective April 30, 2022. For enforcement the Tenant must be served with the 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: December 1, 2021



F. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)



File No. 210044568

Date: December 09, 2021

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Re: An application pursuant to section 49 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

Date of Hearing: December 09, 2021, by conference call.

Date of Decision: December 09, 2021

Attending:

For the Landlord: s.22

For the Tenant: s.22

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for vacant possession of the rental unit to perform renovations or repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed they were not making a prohibited recording at this hearing.

Preliminary Issues

The tenant testified that they were just notify of this hearing as they discovered an email that was sent to them in September 2021, by the landlord to an email address that they only use for etransfers.

The landlord testified that they tried to serve the tenant in person; however, the tenant refused to accept service. The landlord stated they then sent it by email and sent a copy of the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 23, 2021. A Canada post tracking number was provided as evidence.

The Canada post online history shows that on August 25, 2021 the tenant was left a notice card where to pick up the package. On September 2, 2021, a final notice card was left for the tenant and on September 12, 2021 the package was returned unclaimed.

I find the tenant was deemed served with the landlord's application and neglect to pick up the package does not override the deemed served provision of the Act.

At the outset of the hearing the tenant testified that their name is spelled wrong in the application. I have reviewed the tenancy agreement and it appears the tenant may have given an incorrect name at the start of the tenancy, or at least not correct the name in the tenancy agreement. As I do not have any formal identification before me

for the tenant. I have included the name the tenant gave at the hearing "as an also known as" in the style of cause. The tenant is to ensure when they sign legal documents such as a tenancy agreement, they are required to correct any misspelling of their name.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Does the landlord require vacant possession of the rental unit to perform renovations or repairs?

Background and Evidence

The tenancy began on September 1, 2015. Rent at the start of the tenancy in the amount of \$700.00 was payable on the first of each month.

The landlord testified that the house was built in 1940 and the main source of heat is a wood stove. The landlord stated that they have to run a 200amp service from the telephone pole to the house and will have to open the walls to install new wiring to support the new heating source, which will be baseboard heaters and a larger 200amp panel will be installed.

The landlord testified that it could take a month or several months, especially if they do some of the work, such as remove the drywall and run the electrical line to keep the cost down as they only need the electrician to do the actual connections.

The tenant testified that this is a 490 square feet home with two bedrooms. The tenant stated that the wood stove is not useable; however, there is a furnace in the basement. The tenant stated they have also added their own baseboard heaters which are plugged into an electrical outlet.

The tenant testified that they are prepared to accommodate the landlord, if necessary, as they have a self-contained travel trailer that they could use when needed.

The landlord argued there is no working furnace in the rental unit. The landlord stated they are not prepared to let the tenant stay in their travel trailer.

Analysis

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

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

Section 49.2 of the Act states

(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.

In *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs. 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.

In this case, I am satisfied that the landlord has a permit to replace the 100amp service with a 200amp service and install baseboard heating.

However, I am not satisfied that it would take several months simply to add wiring for baseboard heaters. I find this is simply guessing and is on the basis if the landlord

chooses to do some of the work themselves. I find this is not a reasonable plan when ending a tenancy.

The landlord did not provide any evidence from a qualified electrician as to a reasonable timeframe that the actual work would take to be completed. I find it highly unlikely that the work would take any great length of time, with a reasonable plan.

Nor am I satisfied that the entire home would be without power or unusable for the duration of the repair, as often when new wiring is installed it only required brief periods of disruptions to the services and only impacts the area of work.

Further, I have no evidence that it would be unsafe for the tenant to live in the rental unit while the wiring for the baseboards are installed, even if small areas of drywall or paneling have to be removed.

Furthermore, the tenant has indicated they would accommodate the landlord and the work, as they would stay in their self-contained trailer, if necessary, while the repairs were being made. While the landlord objected to the tenant staying in their travel trailer; however, the landlord provided no reasonable explanation for this as there is no evidence that the travel trailer is not permitted to be on the property, and this would be for the sole benefit of the landlord making the repair.

Based on the above, I am not satisfied that the landlord requires vacant possession of the rental unit to make the required repaired. Therefore, I dismiss the landlord's application without leave to reapply.

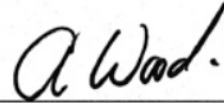
The tenant is to ensure they do not interfere with any work required and must accommodate the landlord's reasonable requests. The landlord is to ensure they give the tenant proper notice to when the work will commence and any special instructions. The tenant should be aware that temporary discomfort is not grounds for compensation.

Conclusion

The landlord's application is dismissed 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: December 08, 2021

A handwritten signature in black ink, appearing to read "A. Wood.", positioned above a horizontal line.

A. Wood, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

-
- Toll-free: 1-800-665-8779

Residential Tenancy Branch

#RTB-136 (2014/12)



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- Lower Mainland: 604-660-1020
 - Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310048240

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Coast Foundation Society (1974), Landlord

Applicant

And

s.22

Tenant

Respondent

Regarding a rental unit at: s.22

Date of Hearing: December 17, 2021 by conference call.

Date of Decision: December 17, 2021

Attending:

For the Landlord: Alipio Santos, director of property development

For the Tenant: s.22



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession to make renovations or repairs pursuant to section 49.2.

This matter was reconvened from a prior hearing on November 23, 2021 before another arbitrator, who issued an interim decision setting out the reasons for the adjournment on December 1, 2021 (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The tenant's ^{s.22} attended the hearing on the tenant's behalf. The landlord was represented at the hearing by its director of property development ("**AS**").

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the ^{s.22} and AS discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The tenant will provide vacant possession of the rental unit to the landlord on or before March 31, 2021 at 1:00 pm.
2. The tenant does not have to pay any rent for the month of March 31, 2021.

These particulars comprise the full and final settlement of all aspects of this dispute. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of this dispute between them.

As the parties have reached a settlement, I make no factual findings about the merits of this application.

To give effect to the settlement reached between the parties, and as discussed at the hearing, I issue the attached order of possession which orders that the tenant provide vacant possession of the rental unit to the landlord by 1:00 pm on March 31, 2022.

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 17, 2021

A handwritten signature in black ink, appearing to be 'P. O'Neill', written over a horizontal line.

P. O'NEILL, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110053396

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: December 30, 2021, by conference call.

Date of Decision: December 31, 2021

Attending:

For the Landlord: s.22

For the Tenant: s.22



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On October 30, 2021, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy 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. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence. The tenants did not submit any written evidence for this hearing.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began approximately 5 years ago with s.22 as the original tenant. s.22 moved in on September 1, 2021, replacing s.22, and a new month-to-month tenancy agreement was signed. Monthly rent is set at \$1,340.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$670.00, which the landlord still holds.

The landlord filed this application in order to obtain vacant possession of the rental unit in order to perform repairs to the rental unit. The landlord testified that the home is in disrepair, and although the upstairs portion of the home was renovated in 2018, the repairs for the tenants' rental unit was postponed. The landlord testified that they had discovered during inspections that the rental unit has deteriorated to the extent that repairs are required. The landlord testified that delaying the repairs would be costly, and the landlord cannot wait any longer to start the repairs. The landlord testified that repairs and renovations would be completed in the only kitchen and bathroom in the suite, and would take at least two months. The landlord testified that the tenants would not have access to essential facilities such as the toilet, shower, and sinks, and therefore the renovations would require that the tenants move out. The landlord testified that there were numerous issues such as faucets rotting, rats, and pipes freezing in the shower. The landlord testified that after demolition there may be more issues that have yet to be discovered.

The landlord testified in the hearing that this was a "small job", and submits that no permits were required.

In reply, the tenants testified that they do not believe the landlord is acting in good faith. s.22 testified that they had moved in on September 1, 2021, and would not have entered into the tenancy agreement if the home was not in good condition. s.22 testified that both parties did a walk through at the beginning of the tenancy, and at the time of the hearing the rental unit remains in good condition. The tenants testified that the issue with the frozen pipe was due to the weather, and has been resolved. The tenants testified that the main reason for why the landlord wishes to end the tenancy was due to the strained relationship between s.22 and the landlord. The tenants testified that the relationship changed after the s.22 had informed the landlord that the outdoor light was not working properly, and that there were storage space issues. s.22 testified that the landlord had

threatened to end the tenancy.^{s.22} testified in the hearing that they had lived there for over 5 years with no issues. The tenants testified that they were willing to work with the landlord and remain in the rental unit if the landlord were to perform the repairs cited in this application.

Analysis

Section 49.2(1) of the Act provides that 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 Act provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

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.

...

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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the

tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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.

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of

vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

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

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

I find that that as of the hearing date, the landlord had yet to obtain any written estimates or scope of work for the intended repairs. The landlord testified that they had obtained the estimate of at least two months based on their previous experience and discussion with their contractors, and feel that this is a true and reasonable estimate of the time required to complete the repairs and renovations described. The absence of these supporting documents, or witness testimony by a certified contractor causes me to question the extent of the work required and that the landlord truly needs at least two months to complete the repairs. As noted above, the onus is on the landlord to provide sufficient evidence to support their application, and in this case I find that the landlord falls short.

Furthermore, the tenants have expressed a willingness to accommodate the repairs without moving out. I find that as of the hearing date, the landlord had not fully considered or proposed this option to the tenants.

After consideration of the evidence before me, I find that the landlord has failed to provide sufficient evidence that the renovations or repairs require the rental unit to be vacant; and that the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

The Landlord's application for an order ending the tenancy 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 is not successful and is dismissed.


Conclusion

The landlord has provided insufficient evidence to meet their burden to prove that the planned work reasonably requires the tenancy to end.

The landlord's request for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant is denied.

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 31, 2021



M. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310054164

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: January 04, 2022, by conference call.

Date of Decision: January 04, 2022

Attending:

For the Landlord: s.22 Agent for the Landlord

For the Tenant: Nobody



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order for Possession pursuant to section 49.2 of *the Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy and to an Order of Possession because the Landlord intends, in good faith, to make renovations/repairs that require the rental unit to be vacant?

Background and Evidence

The Agent for the Landlord stated that on November 27, 2021 the Dispute Resolution Package was sent to the Tenant, via email. The Landlord submitted no evidence to corroborate this testimony.

The Agent for the Landlord stated that the Tenant responded to the email he sent on November 27, 2021. The Landlord submitted no evidence to corroborate this testimony.

The Agent for the Landlord stated that he and the Tenant regularly communicate via email and text message. The Landlord submitted no evidence to corroborate this testimony.

The Landlord submitted no evidence to establish that the Tenant provided the Landlord with permission to serve legal documents via email.

Analysis

The purpose of serving the Dispute Resolution Package to a tenant is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession pursuant to section 49.2 of the *Act*, the landlord has the burden of proving that the tenant was served with the Dispute Resolution Package in accordance with section 89(1) of the *Act*.

Section 89(1) of the *Act* permits a party to serve an Application for Dispute Resolution to the other party in the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

On the basis of the testimony of the Agent for the Landlord, I find that the Dispute Resolution package was served to the Tenant, by email, on November 27, 2021.

I find that the Landlord has submitted insufficient evidence to establish that the hearing documents were served to an email address provided by the Tenant for the purposes of serving documents. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence to establish that the email address was provided for the purposes of serving documents. As the Landlord has failed to establish that the email address was provided for the purposes of serving documents, I cannot conclude that

the hearing documents were served to the Tenant in accordance with section 89(1)(f) of the *Act*.

I find that the Landlord submitted insufficient evidence to establish that the Tenant received the documents the Agent for the Landlord emailed on November 27, 2021. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence to corroborate the submission that the Tenant responded to the email sent on that date. When such evidence is available, or could be available with reasonable effort, I find it should be submitted as evidence.

As there is insufficient evidence to determine that the Tenant received the Dispute Resolution Package, I cannot conclude that the hearing documents have been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.


As the Landlord failed to establish that the Dispute Resolution Package has been properly served to the Tenant and/or received by the Tenant, I am unable to proceed with the hearing in the absence of the Tenant. The Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Conclusion

The Application for Dispute Resolution is dismissed, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution. All future hearing documents must be served in accordance with the *Act*.

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: January 04, 2022



P. Senay, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310054300

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: January 07, 2022, by conference call.

Date of Decision: January 07, 2022

Attending:

For the Landlord: s.22

For the Tenant: s.22



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On November 9, 2021, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy 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. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence. The landlord testified that they did receive the tenant's evidence, albeit late. The landlord confirmed that they did have an opportunity to review the materials, and did not take issue with the admittance of the tenant's evidentiary materials and proceeding with the hearing as scheduled. Accordingly, the hearing proceeded.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in April 2009, with monthly rent currently set at \$1,360.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$600.00, which the landlord still holds.

The landlord filed this application in order to obtain vacant possession of the rental unit in order to perform repairs to the rental unit. The landlord testified that the home is twenty-five years old, and has deteriorated significantly. The landlord testified that they were in the construction business, and like to maintain the buildings. The landlord testified that the flooring is deteriorated, and the landlord preferred to perform full renovations to the duplex, which included repairs to the drywall, cabinets, flooring, and textured ceiling. The landlord testified that the repairs would take approximately two months, but may take longer due to unexpected delays. The landlord testified that due to the nature of the repairs, the home would need to be vacant for that time, and there is no alternative accommodation for the tenant. The landlord submitted letters from contractors confirming that the proposed work would necessitate that the tenants vacate the rental unit.

The tenant questioned whether the repairs were required as they believed the home to be habitable condition, and the proposed repairs to be cosmetic in nature. The tenant also testified that they would accommodate necessary repairs by moving on a temporary basis until the repairs are completed.

The tenant testified that they were unaware of any damage in the rental unit that required repairs, including the drywall. The tenant submitted a detailed history as well as photos of the repairs and painting that they had completed themselves.

The landlord responded in the hearing that they preferred to perform all the repairs at the same time due to difficulties in scheduling trades and obtaining materials for the repairs. The landlord testified that the textured ceiling does not look good, and that they were considering adding more insulation to the front wall. The landlord testified that the wear and tear has been adding up over the years, and have determined that it is time to fix the issues rather than wait.

Analysis

Section 49.2(1) of the Act provides that 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 Act provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

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.

...

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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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.

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

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

The onus is on the landlord to provide evidence that the planned work reasonably requires the tenancy to end.

I find that the landlord has failed to establish that any repairs are required to the home. Although the landlord testified that they had an interest in maintaining the home, the landlord must still establish that *“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”*. I find that the landlord has failed to provide sufficient evidence to establish that this is the case.

Although there was reference to fixing damage, I find that the repairs appeared to be more cosmetic in nature than repairs that would be required to sustain the use of the rental unit. If the landlord was unable to wait for the tenancy to end, the tenant expressed a willingness to accommodate the repairs by moving out on a temporary basis. I find that the landlord is not willing to consider this option. The Courts have 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.

I am not satisfied that the landlord has satisfied all the requirements for an Order of Possession to be granted in order to perform repairs or renovations. The landlord's application for an order ending the tenancy 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 is not successful and is dismissed.

Conclusion

The landlord has provided insufficient evidence to meet their burden to prove that the planned work reasonably requires the tenancy to end.

The landlord's request for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant is denied.

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: January 07, 2022

A handwritten signature in black ink, appearing to be 'M. Lee', written over a horizontal line.

M. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110055295

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord

Applicant

And

s.22

Tenant

Respondent

Regarding a rental unit at: s.22

Date of Hearing: January 11, 2022, by conference call.

Date of Decision: January 11, 2022

Attending:

For the Landlord: s.22

s.22

legal counsel

For the Tenant: No attendance



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: PFR

Introduction

The landlord seeks an order ending the tenancy and an order granting the landlord possession of the rental unit pursuant to section 49.2(1) of the *Residential Tenancy Act*.

Attending the hearing on January 11, 2022 at 9:30 AM were the landlord, ^{s.22} and counsel for the landlord. The tenant did not attend the hearing.

Preliminary Issue: Application under section 49.2 of the Act

Section 49.2 of the *Residential Tenancy Act* (the "Act") was brought into force on July 1, 2021. The underlying purpose of this provision is that a landlord must apply to the Director for an order ending a tenancy (as opposed to issuing a notice to end tenancy) and an order of possession 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.

However, this section is not intended, in my view, to provide an avenue for ending a tenancy when the landlord's intention is to convert a rental unit to a non-residential use. A landlord may only end a tenancy to convert a rental unit to a non-residential use – as is clearly the case in the present application, as they intend to make the rental unit into a takeout restaurant – by issuing a notice to end tenancy under section 49(2)(b) of the Act for the specific purpose of conversion as set out in 49(6)(f) of the Act.

Section 49(6) and subsection (f) of the Act read as follows:

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: [. . .]

(f) convert the rental unit to a non-residential use.

In other words, the landlord's application assumes (incorrectly) that the renovations and repairs include renovations or repairs made for the purpose of converting the rental unit into a restaurant. They do not. And it is for this reason that the landlord's application for orders under section 49.2 of the Act must be dismissed.

That said, the landlord remains at liberty to issue a *Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit* (#RTB-29) under section 49(6)(f) of the Act. The parties will carefully note that on page two of the notice there is a checkbox referencing the reason "Convert the rental unit to a non-residential use." This reflects a reason to end a tenancy expressly permitted under section 49(6)(f) of the Act.

As an aside, I have considered counsel's submission regarding the building's current municipal zoning, and that the rental unit is in property presently zoned for industrial use. Therefore, it is the landlord's position that the renovations and repairs are not "converting" the rental unit from non-industrial to industrial. The rental unit is already "non-residential."

With respect, however, the landlord's application clearly states that the purpose of the renovations and repairs are for "Changing from single family dwelling to take out restaurant." Moreover, while the property may very well be located within an I-1 light industrial zone under C.V.R.D. Electoral Area "E", *Zoning Bylaw No. 1840*, such zoning itself does not cause the residential nature of the rental unit to become non-residential. It is the use, or primary purpose, of the single-family dwelling as a rental unit that creates its residential use for the purposes of the Act.

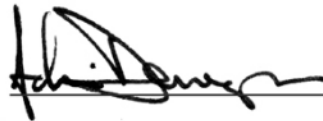
In any event, that the property is located within a light industrial zone and that the landlord intends to convert it into a take-out restaurant is a reasonable purpose for intending to end the tenancy and for issuing a notice under section 49(6)(f) of the Act.

Conclusion

The application is dismissed.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 11, 2022

A handwritten signature in black ink, appearing to read 'A. Denegar', is written over a horizontal line.

A. Denegar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 210053437

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenants,

Respondents

Regarding a rental unit at: s.22

Date of Hearing: January 11, 2022, by conference call.

Date of Decision: January 12, 2022

Attending:

For the Landlord: s.22

For the Tenant: s.22

Unit X: unit 3 Unit Y: unit 5



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, pursuant to section 49.2 of the Act.

Landlord ^{s.2} (the landlord) and tenant ^{s.22} (the tenant) attended the hearing. The tenant was assisted by advocate ^{s.22}. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Vacant Rental Unit

The landlord submitted this application against tenants ^{s.22} (unit X) and ^{s.22} (unit Y). The landlord affirmed tenant ^{s.22} moved out of unit Y on December 31, 2021 and the landlord has possession of that unit. The unit numbers are recorded on the cover page of this decision.

The application for an order of possession for unit Y is moot since the tenancy of unit Y has ended and the landlord has possession of that unit.

Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of the issue listed in this application for dispute resolution:

1. The tenant agrees to give vacant possession of rental unit X to the landlord by May 31, 2022 at 1:00 P.M. in order for the landlord to renovate the rental unit;
2. The tenant will not pay rent due on May 01, 2022, per section 51.4(1) of the Act;
3. After the landlord completes the renovation, he will offer tenant ^{s.22} the right of first refusal for a new tenancy agreement, per section 51.2(1) of the Act.

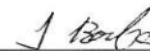
Conclusion

As the parties have reached a settlement, I make no factual findings about the merits of this application.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, pursuant to section 63(2) of the Act, I issue an order of possession to the landlord, which is to take effect by 1:00 P.M. on May 31, 2022. The landlord is provided with this order in the above terms and must serve it on the tenant in accordance with the Act. If the tenant fails to comply with this Order, this order may be filed 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: January 12, 2022



I Borba, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310056096

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenant,

Respondent

Regarding a rental unit at: s.22

Date of Hearing: January 13, 2022, by conference call.

Date of Decision: January 13, 2022

Attending:

For the Landlord: s.22

s.22

Legal Counsel

For the Tenant: s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On November 30, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking vacant possession of the rental unit to perform renovations or repairs. The matter was set for a conference call.

The Landlord, the Landlord's Legal Counsel (the Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Issues to be Decided

- Is the Landlord entitled to vacant possession of the rental unit to perform renovations or repairs?

Background and Evidence

During the hearing, both parties expressed a desire to enter into a mutual agreement to end the tenancy. Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

1. The Tenant will move out of the rental unit no later than 1:00 p.m. on July 31, 2022.
2. The parties agree to compensation in the amount of four-months rent and that this compensation will be applied against the rent due under this tenancy agreement for the period between May 15, 2022, to July 14, 2022.
3. The Landlord and Tenant agree the security deposit that the Landlord holds for this tenancy will be applied to the rent for the period between July 15, 2022, and July 31, 2022.

The above terms of the settlement agreement were reviewed with all parties at the end of the hearing, and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. They also confirmed understanding of the terms of the settlement agreement as full and final settlement of this matter.

Analysis

In order to enforce the conditions of the settlement agreement reached between the Landlord and Tenant, I grant a **Conditional Order of Possession** to the Landlord with an effective date of **July 31, 2022**; this order is only to be served on the Tenant if the Tenant does not move-out in accordance with this agreement.

Conclusion

The parties are ordered to comply with the terms of the settlement agreement as outlined in this decision.

I grant a conditional **Order of Possession** to the Landlord to be served on the condition that the Tenant does not comply with the first term of the settlement agreement. If this occurs, the Order of Possession must be served upon the Tenant and **will be effective** not later than 1:00 p.m. on **July 31, 2022**. Should the Tenant fail to comply with this Order, this Order may be filed 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: January 13, 2022



G. Lloyd, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310055750

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenant,

Respondent

Regarding a rental unit at: s.22

Date of Hearing: January 24, 2022, by conference call.

Date of Decision: January 25, 2022

Attending:

For the Landlord: s.22

For the Tenant: No person in attendance



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, under section 49.2.

I left the teleconference connection open until 9:40 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord affirmed he served the notice of hearing and the evidence (the materials) by regular mail on December 04, 2021. The landlord emailed and texted the tenant to inform that he served the materials by regular mail and the tenant confirmed receipt of the text message.

Section 89(1) of the Act states:

An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;**
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(emphasis added)

Residential Tenancy Branch Policy Guideline 12 (March/2021) states:

3. SPECIAL REQUIREMENTS FOR SERVICE OF DOCUMENTS for:

- An application for dispute resolution
 - except for applications by a landlord for an order of possession or an order ending a tenancy early
 - A Residential Tenancy Branch decision to proceed with a review of a Decision
- [...]

There are only four methods of service that may be used for these matters. These are:

Personal service

- o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.
- o Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant. In cases where there are multiple tenants, the landlord must serve a copy to each co-tenant separately.

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

Registered Mail

- o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord. See "Service of documents on an incorporated company or society" in section 6 below or "Serving documents at the address at which the landlord carries on business as a landlord" in section 7 below.
- o Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant. Registered Mail includes any method of mail delivery provided by

Canada Post for which confirmation of delivery to a named person is available. This includes Express post, if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post's website. A screen shot or picture of the information is sufficient.

Email service

o To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

A Residential Tenancy Branch Order Regarding Service

o See "Orders for substituted service" in section 13 below and "Proof of service" in ion 14 below.

Regular mail is not a permitted method of service for the materials. The tenant did not attend the hearing. Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the Act.

The landlord must serve the notice of hearing of an application under section 49.2 of the Act in accordance with section 89(1).

Conclusion

I dismiss the application 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 *Residential Tenancy Act*.

Dated: January 25, 2022



J Borba, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310055357

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

GALAXY INVESTMENT HOLDINGS Ltd, Landlord,

Applicant

And

s.22

Tenants,

Respondents

Regarding a rental unit at: s.22

Date of Hearing: January 17, 2022, by conference call.

Date of Decision: February 2, 2022

Attending:

For the Landlord: s.22

Landlord's Agent

For the Tenant: s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On November 9, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy 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 both the 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

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

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they are a corporate landlord and that there are only four units occupied at the dispute address. That this application seeks to end the tenancy for rental units 202 and 302, located on the southwest corner of the building.

The Landlord provided testimony on the reasons why the tenancy must end. The Landlord testified that they had initially planned to remediate the balconies and replace exterior windows but that when they started the renovations in the unoccupied southeast corner of the building, they discovered wood rot and mould, which led to the need for more extensive renovations. The Landlord submitted 19 pictures of the mould, wood rot and renovation work taken in the other units of the rental building, as well as a building permit into documentary evidence.

The Landlord was asked if they have a contractor in place to perform all the repairs. The Landlord testified that they do have a contractor in place as work has already started on the unoccupied units of the rental property.

The Landlord testified that they have started with work on the south side of the building first and will eventually move to the Northside, where the other two tenancy are located. The Landlord testified that the entire building would take six to 12 months to complete. The Landlord was asked how long the work on rental units 202 and 302 would take to complete. The Landlord testified that they could not say exactly as they would not know the extent of wood rot and mould until they could start the work in those units. Additionally, the Landlord testified that the window replacement takes three weeks.

The Landlord testified that these tenancies must end due to the extensive renovations that may be required, as the exterior window wall, the full interior walls and the ceilings of the other units had to be replaced due to mould and wood rot. The Landlord testified that they believe that the same conditions will be found in units 202 & 302, stating that it is easier and quicker to complete the repairs if the Tenants are out of the rental unit.

The Tenant testified that they do not believe the Landlord is acting in good faith as the Landlord has made several attempts to end their tenancy since purchasing the building.

The Tenants also testified that the Landlord had not completed an inspection of their rental units to confirm the presence of mould and wood rot. The Tenants testified that they do not believe the same mould and wood rot conditions are present in their rental units. The Tenants submitted five pictures of their rental units into documentary evidence.

The Landlord agreed that units 202 & 302 had not been inspected, stating that in their professional opinion, the mould and wood rot was obviously throughout the entire building.

The Tenants testified that they are willing to remain in their respective rental units while the repair work is conducted. Both Tenants agreed that they are willing to work with the Landlord in order to have the renovation work completed, including moving furniture and vacating the rental units for short periods when required.

The Landlord testified that the window replacement takes three weeks and that the full renovation of all the units in the building would take six months to one year. The Landlord testified that they could not say how long the renovations would take in units 202 and 302 as that could not be determined until they started to work in those units but that the work goes faster in empty units.

Analysis

Section 49.2(1) of the Act provides that 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 Act provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information regarding permits:

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.

...

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.

With respect to Good Faith, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they are not trying to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant.

With respect to Renovations or Repairs, Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use provides the following information:

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.

Ending the Tenancy Agreement is the Only Reasonable Way to Achieve the Necessary Vacancy

In Aarti Investments Ltd. v. Baumann, 2019 BCCA 165, the Court of Appeal held that the question posed by the Act is whether the renovations or repairs “objectively” are such that they reasonably require vacant possession. Where the vacancy required is for an extended period of time, then, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient to establish objectively whether vacant possession of the rental unit is required.

In Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257, the BC Supreme Court found that it would be irrational to believe that a landlord could end a tenancy for renovations or repairs if a very brief period of vacancy was required and the tenant was willing to move out for the duration of the renovations or repairs.

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

The onus is on the Landlord to provide evidence that the planned work reasonably requires the tenancy to end.

The Landlord has testified that their renovation plans include a full renovation of all the balconies and the replacement of the exterior windows for all the units of the rental property. The Residential Tenancy Policy Guide #2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use, Appendix A, states that it is unlikely that replacing exterior windows and balconies remediation would require that a tenancy would need to end to complete the work.

In this case, the Landlord argued that extensive mould and wood rot had been discovered in the other units on the rental property when they started their window and balcony renovation project on other units in the rental property. The Landlord argued that the same mould and wood rot would be found in units 202 and 302 when they start work on those units and that these tenancies need to end due to the likelihood of finding the same conditions in units 202 & 302 that had been found in the other units of this rental building.

I have considered that the Landlord has not hired a contractor to inspect the rental units 202 and 302 to determine the extent of any needed repairs. The Landlord stated they had based this application solely on what had been found during the renovation of the other rental units in this building. A lack of an inspection for these units by the Landlord causes me to question the extent of the work required.

I find that it would be unreasonable to end these tenancies due to the possibility of finding mould and wood rot that may require additional renovations to the ones set out in the work permit that I have before me in these proceedings. Also, I find that the work permit submitted into evidence does not cover the major renovations that the Landlord testified may be required in these units. Although it is unclear if a work permit for this possible work would be required or not, the Landlord has not provided a statement from the local building authority to confirm one way or the other if a building permit is required.

I have also considered the Landlord's statement that it is easier and quicker to complete repairs if the Tenants are out of their rental units. The Courts have 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.

Additionally, the Tenants have agreed, in these proceedings, that they are willing to work with the Landlord to complete these repairs, agreeing to move furniture and vacating their units for short periods to allow for the completion of the renovations.

After consideration of the evidence before me, I find that the Landlord has provided insufficient evidence that the repairs the Landlord is claiming for in these proceedings are required to these two rental units; that the Landlord has all the necessary permits and approvals required by law to carry out the possible renovations or repairs for mould and wood rot; that the renovations or repairs require the rental units to be vacant; and

the only reasonable way to achieve the necessary vacancy is to end these tenancy agreements.

The Landlord's application for an order ending the tenancy 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 is not successful and is dismissed.

Conclusion

The Landlord has provided insufficient evidence to meet his burden to prove that the planned work reasonably requires the tenancy to end.

The Landlord's request for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant is denied.

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: February 2, 2022



G. Lloyd, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310050870

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenant,

Respondent

Regarding a rental unit at: s.22

Date of Hearing: February 22, 2022, by conference call.

Date of Decision: February 23, 2022

Attending:

For the Landlord: No person in attendance

For the Tenant: No person in attendance



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, pursuant to section 49.2.

Although I waited 10 minutes, neither party attended at the appointed time set for the hearing, 9:30 A.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only person who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Conclusion

Based on the above, **in the absence of any evidence or submissions I order the application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: February 23, 2022



I Borba, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310051140

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

CHHR Development Ltd, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: February 22, 2022, by conference call.

Date of Decision: February 23, 2022

Attending:

For the Landlord: No one attending

For the Tenant: No one attending



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On October 5, 2021, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy 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.

Neither party attended at the appointed time set for the hearing, although I waited until 9:40 A.M. to enable them to participate in this hearing scheduled for 9:30 A.M. A party did call in, who identified themselves with the initials ^{s.22} but hung up before further details could be ascertained. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that I was the only one who had called into this teleconference, other than the ^{s.22} who appeared to have attended the wrong hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

Accordingly, **in the absence of any submissions in this hearing I order the application dismissed with liberty to reapply.** I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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: February 23, 2022

A handwritten signature in black ink, appearing to be 'M. Lee', written over a horizontal line.

M. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310051641

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord,

Applicant

And

s.22

Tenants,

Respondents

Regarding a rental unit at: s.22

Date of Hearing: February 24, 2022, by conference call.

Date of Decision: February 24, 2022

Attending:

For the Landlord: s.22

For the Tenant: s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for renovations or repairs, pursuant to sections 49.2 of the *Act*.

Tenant^{s.22} and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants did not attend this hearing, although I left the teleconference hearing

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The landlord testified that the tenants were each served with this application for dispute resolution and evidence via registered mail on October 20, 2021. Tenant^{s.22} testified that he received the above documents. I accept the landlord's testimony which is supported by tenant^{s.22} testimony. I find that the tenants were served with the above documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that he misspelled tenant ^{s.22} first name on this application for dispute resolution. The landlord testified to the correct spelling. Pursuant to section 64 of the *Act*, I amend this application for dispute resolution to state the correct spelling of tenant ^{s.22} first name.

Issue to be Decided

1. Is the landlord entitled to an Order of Possession for renovations or repairs, pursuant to sections 49.2 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of tenant ^{s.22} and the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately seven years ago with a different landlord and is currently ongoing. Monthly rent in the amount of \$965.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant to the original landlord. The subject rental house is comprised of three suites. Tenant ^{s.22} resides in one of the suites. Tenant ^{s.22} and ^{s.22} resided in one of the suites but have already moved out. Tenant ^{s.22} resided in the third suite but has already moved out.

The landlord testified that he plans on taking the entire house down to the studs and putting in a new foundation. The landlord testified that he plans on making two living units in the house and building a third living unit in the back yard. The landlord testified that he expects to get the development permit this Friday and that the building permit will be issued shortly after that. The landlord entered into evidence an email from the subject rental city dated January 25, 2022 which states:

I've now cleared engineering for your building permit. I might add that the development permit for your property has yet to be issued (engineering is also cleared for DP) and must be issued prior to the building permit.

The landlord filed this application for dispute resolution on October 12, 2021.

Analysis

Section 49.2(1) of the *Act* provides that 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 *Act* provides that 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 the above subsection (1) apply.

Residential Tenancy Branch Policy Guideline # 2B Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use (PG #2B), provides the following information regarding permits:

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.....


Based on the landlord's testimony, and the January 25, 2022 email, I find that the landlord does not have all the necessary permits and approvals required by law to carry out the renovations or repairs, and did not have the necessary permits and approval at the time this application to end tenancy was made. Pursuant to PG #2B, the landlord was required to have the permits in place at the time this application for an Order of Possession was made. Since the landlord has failed to meet the first test set out in section 49.2(1)(a) of the *Act*, I find that the landlord is not entitled to an Order of Possession.

Conclusion

The landlord's application for dispute resolution 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 *Residential Tenancy Act*.

Dated: February 24, 2022



L. Mooney, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110053286

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

23 Menzies Holdings Ltd., Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: March 10, 2022, by conference call.

Date of Decision: March 10, 2022

Attending:

For the Landlord: No Appearance

For the Tenant: No Appearance



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

This matter was set for a conference call hearing at 9:30 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and neither Party called into the hearing during this time. It was confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. As neither Party attended the conference call, this application is dismissed with leave to reapply. Leave to re-apply is not an extension of any applicable limitation period.

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: March 10, 2022



R. Weitzel, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310055307

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord

Applicant

And

s.22

Tenant

Respondent

Regarding a rental unit at: s.22

Date of Hearing: March 28, 2022, by conference call.

Date of Decision: March 28, 2022

Attending:

For the Landlord: No attendance

For the Tenant: No attendance



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: PFR

Introduction

The landlord made an application under section 49.2 of the *Residential Tenancy Act*. A hearing was scheduled for March 28, 2022 in respect of this application.

Preliminary Issue: Non-Attendance of Parties

Rule 7.1 of the Residential Tenancy Branch's *Rules of Procedure* requires a hearing to start at the scheduled time and date. Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, and to make a decision or dismiss the application, with or without leave to re-apply.

The hearing commenced by way of teleconference on the scheduled date at 11:00 AM. I dialed into the teleconference on time and monitored the line for ten minutes. Neither party dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. Given the above, and in the absence of any other information regarding this application, I find that the application was abandoned. Accordingly, the landlord's application is dismissed, with leave to reapply.

This decision is made on delegated authority under the *Residential Tenancy Act*.

Dated: March 28, 2022

A. Denegar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310059815

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

Huntly Investments Limited, Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: April 19, 2022, by conference call.

Date of Decision: April 20, 2022

Attending:

For the Landlord: s.22 for the company

For the Tenant: s.22



Dispute Resolution Services

Page: 1

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) seeking remedy under the Residential Tenancy Act (Act) for:

- An order of possession as the landlord requires vacant possession of the rental unit to perform renovations or repairs.

The landlord^{s.22} and the tenant were present at the hearing. The hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. All parties provided affirmed testimony they were not recording the hearing.

The parties confirmed receiving the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord/applicant was listed as an individual. At the hearing, the originally named landlord, ^{s.22} confirmed that the actual landlord was a named company. As a result, I have removed ^{s.22} as a landlord and instead, listed the named company as the landlord on the style of cause page of this Decision.

Issue(s) to be Decided

Is the landlord entitled to end the tenancy due to renovations or repairs?

Background and Evidence

This tenancy began in 2003, and the landlord asserted that the tenant is currently paying monthly rent of \$563. There was no evidence that the tenancy was for a fixed-term.

The landlord is seeking an order of possession of the rental unit in order to perform renovations and repairs. In their application, the landlord wrote:

*The City of (*city name*) (City) has ordered the owner to make substantial structural repairs to the rear of the building. Due to the age of the building, we were advised that the building needed to be remediated for hazardous materials including asbestos and lead paint. Further, our environmental consultants have indicated that it is impossible to do this work safely while the building is occupied. Our application is in support of carrying out the required work.*

[Reproduced as written except for anonymizing identifying information]

In a written statement, the landlord submitted that the house in question is more than 110 years old, was built as a single family dwelling and later converted to a rooming house. The house is not an apartment building and has no legal suites, only rooms with shared bathroom facilities. Currently the tenant is the only occupant of the dwelling.

The landlord further wrote that a full assessment was taken on the house in 2013 and a determination was made that the building had reached the end of its effective life.

The landlord submitted that the City has ordered the landlord to repair and/or reconstruct the fire escape to the building.

A company hired by the landlord to provide an assessment and recommendations wrote in a report that the fire escape is incorporated in the structure of the back of the building and any construction will require a significant intrusion into the structure of the building. The report further wrote that once the structure of the building has been exposed, code upgrades will be necessary. The rear wall that is in question is the rear wall of the tenant's rental unit. As the fire department has prohibited the fire egress from being relied upon, a fire watch is required to be established while the current work is undertaken.

The report went on to state that from an on-site assessment, hazardous building material such as lead paint and asbestos were identified within the building, which pose a health and safety risk. Once exposed, the hazardous materials will be distributed. The report said that while the building was occupied, exposure would present an "extreme risk of health and safety to both the workers doing the work and any tenants still present in the building".

The company recommended that the house be vacated, and that hazardous building material be remediated prior to beginning any other subsequent structural work, to maintain compliance with applicable WorkSafeBC regulations and guidelines.

Filed in evidence was a copy of the report.

Filed in evidence was a building permit issued on November 17, 2021, for interior alterations to "allow salvage and abatement of non-structural components prior to or during abatement work and removal of non-structural hazardous materials in this existing multiple conversion dwelling building".

The landlord submitted that work on the dwelling is a two-phase process, and the timeline for the first phase is optimistic, depending on the extent of the hazardous materials remediation. The second phase will require an application for a development permit, once the first phase is completed.

Tenant's response –

The tenant agrees the work needs to be done. The tenant submitted in a written statement indicating she is willing to vacate the property for the “short term it will take to complete the remediation and repairs and the replacement of the fire escape”.

The tenant further wrote that the need for “repair was due to the neglect and disregard for tenant safety that the landlord has shown toward the property for many years”.

Filed in evidence by the tenant was a copy of the Order for the construction of a new fire escape issued to the landlord. Additional evidence was a copy of an email from the City to the tenant, among others, answering inquiries from the tenant.

The email confirmed that there are two permits that are required to correct the fire escape violation and that the permits could not be done in tandem. The first permit would cover remediation of the hazardous materials and once done, a second permit would be required.

The City also informed the tenant that she would need to vacate the rental unit while work was being done. The City estimated the owner would need the tenant to be out of the rental unit for 3-4 months.

Analysis

Based on the relevant oral and written 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, 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 Act states that the director must grant an order ending the tenancy and grant the landlord an order of possession if the director is satisfied that all the circumstances in subsection (1) apply.

Tenancy Policy Guideline 2B provides the following information:

D. RENOVATIONS OR REPAIRS Vacancy requirement Section 49.2 allows a landlord to apply to the RTB for an order to end the tenancy and an order of possession to renovate or repair a rental unit if the necessary renovations or repairs require the rental unit to be vacant. Any period of time in which the unit must be vacant is sufficient to meet this requirement.

Guideline 2B provides further information as follows:

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 right of first refusal (see below) contemplates new tenancy agreements being provided at least 45 days before the renovations or repairs that ended the tenancy are completed. If the timeframe is longer than 45 days, it may be unreasonable for the tenancy agreement to continue even if the tenants are willing to make alternative living arrangements. The longer the timeframe, the less likely the tenant can be considered to retain the rights of possession and use contemplated for tenancy agreements, as established in the RTA, and for which the tenant pays rent.

In the matters before me, the undisputed evidence is that the landlord must make the repairs to the fire escape as ordered by the City, and by the tenant's own evidence, the City estimates this two-phase process could take 3-4 months and that the tenant must vacate the rental unit during the work. Further, the tenant agreed the work needs to be done.

For these reasons, I find it unnecessary to examine the landlord's good faith in making this request.

I find the landlord has submitted sufficient evidence, along with the tenant's own evidence, to satisfy all the requirements of section 49.2(1) of the Act as outlined above. Therefore, the landlord's application to end the tenancy and for an order of possession of the rental unit is successful.

For these reasons, I **grant** the landlord an order of possession of the rental unit effective August 31, 2022, at 1:00 pm., as outlined in section 49.2 (4) of the Act.

I make no determination of whether the tenant has the right of first refusal as the expected timeframe of work estimated by the City exceeds 45 days and there was no evidence considered at the hearing as to whether the residential property has 5 or more rental units.


Conclusion

The landlord's application for an order of possession of the rental unit in order to perform renovations and/or repairs that require the rental unit to be vacant is granted.

The landlord is granted an order of possession of the rental unit effective August 31, 2022, at 1:00 pm.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 20, 2022



D. Vaughn, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110055470

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: April 25, 2022, by conference call.

Date of Decision: April 25, 2022

Attending:

For the Landlord: s.22

For the Tenant: No one attending



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

On January 20, 2022, the Landlord submitted an Application for Dispute Resolution under section 49.2(1) of the *Residential Tenancy Act* ("the Act") requesting an order ending the tenancy 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.

While the landlord attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified that they had served the tenant with their application and notice of hearing by way of registered mail. The landlord testified that they were unable to provide the specific tracking information or details about how and when the tenant was served.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;


(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

The tenant did not attend the hearing to confirm that they were aware of the hearing date and time, or were provided with the calling instructions to attend the teleconference call. The tenant did not provide any written evidence for this hearing, nor did they provide any indication that they were aware of the scheduled hearing. Although the landlord's testimony was that they had served the tenant with the hearing documents, and that the tenant was well aware of the scheduled hearing and landlord's application, the landlord did not provide any proof to confirm that this is the case. Neither the landlord nor the tenant provided sufficient evidence to support that the parties had entered into any mutual agreement or settlement in relation to this matter. I find that the landlord has failed to support that their application package was served in accordance with section 89 of the *Act*. I therefore dismiss the landlord's application 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 *Residential Tenancy Act*.

Dated: April 25, 2022



M. Lee, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110061596

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

BRAYE-DEAN INVESTMENTS LTD., Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: May 9, 2022, by conference call.

Date of Decision: May 18, 2022

Attending:

For the Landlord: s.22

co-owner of named company

For the Tenant: s.22

– agent/interpreter



Dispute Resolution Services

Page: 1

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,^{s.22} (owner) of the named landlord company, tenant agent^{s.22} (agent) and tenants^{s.22} 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, s.22 (other tenant^{s.22} in addition to the tenants before me. The owner explained that they requested to remove other tenant^{s.22} as they reached a mutually settled agreement and other tenant^{s.22} has already vacated the rental building. As a result, I have removed other tenant^{s.22} from this application and will not reference other tenant^{s.22} 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 s.22 and have been in the rental unit since coming to Canada. The interpreter stated that the husband is s.22 and the mother is s.22 s.22 soon, the latter of which had to be rescheduled to the potential of moving. In addition, the interpreter stated that their son has s.22 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

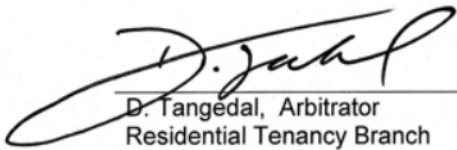
The landlord's application is successful.

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



D. Tangedal, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Please Note: Legislated deadlines apply
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Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 210063569

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

GOLDEN PROPERTY INVESTMENTS LTD., Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: May 30, 2022, by conference call.

Date of Decision: May 30, 2022

Attending:

For the Landlord: s.22
s.22

(legal counsel), s.22

For the Tenant: s.22

(legal counsel)



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 30, 2022. The Landlord applied for an order of possession for the rental unit in order to perform renovations or repairs that require the rental unit to be vacant, under section 49.2(1) of the *Residential Tenancy Act* ("the Act").

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

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.

Settlement Agreement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision and an Order:

Both parties agree that:

- The tenancy will end by, and the Tenant must vacate the rental unit no later than, July 31, 2022, at 1pm.
- The Tenant will continue to pay normal monthly rent (\$781.00/month), until the end of the tenancy
- Once the Tenant vacates the rental unit, the Landlord will pay the Tenant \$2,000.00, forthwith.
 - The Landlord is not required to provide one month compensation in addition to the above noted amount of \$2,000.00
- The Tenant relinquishes her right of first refusal after the rental unit has been renovated.
- The Tenant may still proceed with her future application for monetary compensation which she has already filed.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter. Parties are encouraged to try to work together on any remaining issues.

In support of the above agreement, I will issue an order of possession to the Landlord to reflect the end of the tenancy, July 31, 2022, at 1 pm. This order may be served if the Tenant fails to move out by this date.

I will also issue a monetary order to the Tenant for the above noted amount of \$2,000.00, which will be payable once she vacates the rental unit.

Conclusion

In support of the agreement described above, the Landlord is granted an order of possession effective **July 31, 2022**, at 1:00 p.m. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Tenant is granted a monetary order in the amount of **\$2,000.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: May 30, 2022

A handwritten signature in black ink, appearing to be 'C. Arnsdorf', written above a horizontal line.

C. Arnsdorf, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

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- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 310061796
Additional File No: 310063409

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

, **Landlord**

Applicant/Respondent

And

s.22

Tenants

Respondents/Applicants

Regarding a rental unit at: s.22

Date of Hearing: May 31, 2022 by conference call.

Date of Decision: May 31, 2022

Attending:

For the Landlord: No one attending

For the Tenants: s.22

RN 589 859 675 CA



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PFR / CNL-4M

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”):

- 1) the landlord’s application for an order of possession to make renovations or repairs pursuant to section 49.2; and
- 2) the tenants’ application to cancel the landlord’s Four Month Notice to End Tenancy for Demolition or Conversion of Rental Unit (the “**Notice**”) pursuant to section 49.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the landlord to call into the hearing scheduled to start at 9:30 am. The tenants attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenants and I were the only ones who had called into the hearing.

Tenant^{s.22} testified she served that the landlord with the notice of dispute resolution package for the tenants’ application and supporting documentary evidence via registered mail on February 24, 2024. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with these documents on March 1, 2022, five days after^{s.22} mailed them, in accordance with sections 88, 89, and 90 of the Act.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the onus in both applications.

As he did not attend the hearing, I find that he has failed to discharge his evidentiary burden to prove that he is entitled to the order sought in his application and the tenants are entitled to the relief sought in theirs (that is, the cancellation of the Notice). The landlord did not provide the Residential Tenancy Branch with any documentary evidence in advance of the hearing. In any event, Rule of Procedure 7.4, requires the landlord (or his agent) must attend the hearing and present his evidence for it to be considered.

Accordingly, I dismiss the landlord's application, without leave to reapply and I grant the tenants' application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

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: May 31, 2022

A handwritten signature in black ink, appearing to be 'P. O'Neill', written over a horizontal line.

P. O'NEILL, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

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Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply
- How and when to issue a Notice of Additional Rent Increase - Eligible Capital Expenditures:
Visit: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/additional-rent-increase>

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Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 110060129

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22
s.22

Date of Hearing: June 02, 2022, by conference call.

Date of Decision: June 02, 2022

Attending:

For the Landlord: Nobody

For the Tenant: s.22 Tenant of s.22



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

PFR

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlords applied for vacant possession of the rental units for the purposes of making repairs/renovations.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession because the Landlord requires vacant possession of the units for the purposes of making repairs/renovations?

Background and Evidence

Section 61 of the *Residential Tenancy Act (Act)* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for a teleconference hearing.

Rule 10.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may decide or dismiss the application, with or without leave to re-apply.

This hearing was scheduled to commence at 9:30 a.m. today. The Tenant attended the scheduled start time of the hearing. By the time the teleconference was terminated at 9:41 a.m., the Landlord had not attended.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only people in the teleconference.

The Tenant stated that the Application for Dispute Resolution was posted on the door of her rental unit, although she does not recall when it was received. The Tenant stated that the Landlord informed her that the hearing had been rescheduled from May 13, 2022 to today.

Analysis


I find that the Application for Dispute Resolution has been abandoned.

Conclusion

I dismiss the Application for Dispute Resolution with leave to reapply, as I have not made any findings of fact or law with respect to the Application.

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: June 02, 2022



P. Senay, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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