

Renovation or Renoviction?



Here is an interesting situation. Imagine that you are a private landlord that owns a small apartment complex and recently found out that the complex requires extensive renovations to meet the *Building Code Act, 1992, S.O. 1992, Chapter 23*; however, the units are currently rented. What can you do?

Firstly, it's important to understand where the renovation you want to do fits into the situation. In general, you must offer an 'open door' to return whereas the tenant has the right to resume living in the building following the completion of the renovations and the landlord is unable to increase the rent as a result of the renovations. To assist in the right to reoccupy process, tenants must give written notice of an intention to reoccupy the unit following the renovations and must also provide written notice of an intended temporary address.

How Extensive Is the Renovation?

The intended repair and renovation work must be significant as it must be a sufficient enough renovation as to displace the tenants while the work takes place. On this point, in the matter of *[Landlord] v. [Tenant]*, [2011 CanLII 101419](#) (ON LTB), the renovations were found as without the significance necessary to require the tenants to vacate the premises whereas the intended renovation was without need of a building permit and thereby deemed insignificant.

In this situation, the landlord was previously ordered by a building inspector to carry out several changes to the house, which was rented, including removing walls, kitchens, and laundry areas. Of the three units, two units were already vacant and much of the repairs to those units were already complete. However, in the third unit, the tenants fought to stay. The matter was brought to the Landlord Tenant

Board and the legal issue for adjudication was whether the landlord required vacant possession in order to complete the work; essentially, whether the tenants needed to leave while the renovation work was performed.

The renovation work that remained outstanding, being for the remaining third unit, included sealing an entrance, constructing a balcony, and building a closet. The legal test that the Landlord Tenant Board adjudicator applied is found in the *Residential Tenancies Act, 2006*, [S.O. 2006, Chapter 17](#) under subsection [50\(1\)](#) of the Act, which states:

[50\(1\)](#) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

(a) demolish it;

(b) convert it to use for a purpose other than residential premises; or

(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

In the *[Landlord] v. [Tenant]* matter as above, both (a) and (b) were irrelevant. The adjudicator at the Landlord Tenant Board focused on (c) which requires that a building permit be required to do the work at issue and therefore that the work is significant enough that vacant possession is required. It was already known that repairs and renovations were necessary whereas the landlord was ordered to carry such repairs and renovations by the local building inspector; however, what still needed determination was whether vacant possession, meaning displacement of the tenants, was necessary to enable the repairs and renovations.

Within the testimony of the landlord, the landlord cited concerns of noise, dust, and safety hazards for the tenants; however, the landlord failed to adequately persuade the Landlord Tenant Board adjudicator that such were significant concerns whereas the landlord testified that the repairs were relatively minor in nature and the landlord also failed to provide any evidence (eg. a general contractor testifying) to support the viewpoint. Furthermore, the landlord indicated to the Landlord Tenant Board that the landlord wished to increase the rent following the renovations; and

accordingly, the Landlord Tenant Board adjudicator remarked that, *"This evidence does not establish that vacant possession is necessary for the renovations to be completed as much as it indicates that the Landlords have an ulterior motive for wanting the Tenants to leave."*

Ultimately, the adjudicator determined that the landlord lacked the need of vacant possession because the required renovation work was relatively minor in nature and the tenants were willing to accept the anticipated disturbances.