

Case Summary

An Important outcome for residential landlords



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Recently, reasons for judgment in the case of *Aarti Investments Ltd. v. Baumann* were released by the Court of Appeal. Harper Grey LLP acted for the landlord, and the Community Legal Assistance Society of BC acted for the tenant. This case provided the Court of Appeal with a rare opportunity to clarify section 49(6) of the *Residential Tenancy Act* which lets a landlord end a tenancy when the landlord has all necessary permits and approvals required by law and intends, in good faith, to renovate the rental unit in a manner which requires vacant possession.

In this case, the landlord was the owner of a rental apartment building in Vancouver's West End that was old and had numerous significant deferred maintenance issues from a time before the current landlord owned the property. Some of the required repairs and replacements to Ms. Baumann's unit included replacing the water pipes servicing the rental unit as well as the electrical system. The landlord was advised by its insurer that its property insurance for the building might be voided unless this work was addressed.

The landlord served a section 49(6) notice on Ms. Baumann to end her tenancy. Ms. Baumann applied for dispute resolution.

At arbitration, the landlord's tradespeople testified that it would take months to complete the required renovations and that vacant possession would be required throughout. At the time of the hearing, the landlord's electrical permit needed an amendment to encompass a required panel replacement.



Ms. Baumann’s legal advocate advanced several arguments:

1. The eviction was in bad faith and primarily intended to evade rent controls. Ms. Baumann paid below market rent because her rent had not been consistently increased by the previous landlord;
2. the landlord did not need vacant possession because Ms. Baumann was prepared to move out for the duration of the renovation and move back in afterwards; and
3. because the landlord’s electrical permit needed an amendment, the landlord did not have “all necessary permits and approvals required by law”.

The arbitrator upheld the notice to end tenancy and issued an order of possession.

The tenant applied for judicial review which was heard last year. The B.C. Supreme Court set aside the arbitrator’s decision because:

1. the arbitrator’s reasons were inadequate. He stated there was insufficient evidence of bad faith without meaningfully addressing Ms. Baumann’s arguments. In doing so, the arbitrator also appeared to have reversed the onus of proof of a good faith intention from the landlord and onto the tenant;
2. the arbitrator should have considered Ms. Baumann’s offer to move out during the renovations. According to the justice, this offer was a “practical” alternative to ending her tenancy; and
3. the fact one of the landlord’s permits required an amendment meant that the landlord did not have all necessary permits and approvals required by law to perform the renovation.

The Supreme Court’s interpretation of the law created restrictions that were almost impossible for landlords to overcome. It meant any tenant could potentially

defeat a notice served under 49(6) of the Act simply by asserting a willingness to move out for the duration of the renovations. It left questions unanswered such as how a landlord can require a tenant to move out temporarily when the concept of a temporary move out does not exist in the Act, or why a landlord would undergo a substantial and expensive renovation

if there was no prospect of cost recovery.

The landlord appealed. The Court of Appeal confirmed the decision had to be reconsidered by the RTB. The arbitrator’s reasoning had too many gaps, which meant that the court could not defer to the arbitrator’s decision.

However, the Court of Appeal also gave directions which clarified the law and restored practical meaning and use to section 49(6) notices.

First, the Court of Appeal found that, where a renovation is expected to be months in duration, offers to move out made by tenants are largely irrelevant. As set out by the Court:

The chambers judge’s conclusion [that an offer to move out must be considered] is implicitly based on the proposition that whether the renovation is consistent with continued tenancy hinges upon the tenant’s willingness to return to the premises, even if the tenant is out of possession for months...

In my view the plain wording of the Act does not support that interpretation. Neither precedent nor common sense require the arbitrator to expressly deal with the evidence the Tenant in this case was willing to find alternate accommodation for the duration of the work. [emphasis added]

Second, the Court of Appeal found that tenants cannot make technical arguments concerning the adequacy of the permits. As long as the landlord has permits and approvals for enough work which requires vacant possession, that is enough, even if a permit needs an amendment to encompass the full scope of the planned work. This is a reasonable finding, particularly

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since some municipalities will not even issue all necessary permits for a large construction project until it is both underway with the rental unit vacant.

Section 49(6) notices exist because it is unrealistic to expect landlords to perform major construction work without the prospect of receiving cost recovery or compensation for the substantial cost, effort, and risk a landlord takes on when performing a substantial building renovation requiring vacant possession. Although they are controversial in today's tight rental market, and the law, which has largely not changed since the 1970's, probably could stand to be updated, they are the only way a landlord can end a tenancy for important renovation work requiring vacant possession.

The legal test required to end a tenancy for a significant renovation was already strict, did not allow a landlord to end a tenancy in bad faith for an ulterior motive, and did not need to be made restrictive almost to the point of futility when the Supreme Court added additional requirements. The Court of Appeal's decision to depart from the Supreme Court's reasoning represents an important outcome for residential landlords.

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