

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

July-19

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

A. LEGISLATIVE FRAMEWORK

Section 49(6) of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to:

1. demolish the rental unit;
2. renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
3. convert the residential property to strata lots under the [Strata Property Act](#);
4. convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
5. convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
6. convert the rental unit to a non-residential use.

Section 42(1) of the *Manufactured Home Park Tenancy Act* (MHPTA) allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law and intends in good faith to convert all or a significant part of the park to a non-residential use or an alternative residential use. (See [Policy Guideline 33: Ending a Manufactured Home Park Tenancy Agreement - Landlord Use of Property](#))

B. PERMITS AND APPROVALS REQUIRED BY LAW

When ending a tenancy under section 49(6) of the RTA or 42(1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. If a notice is disputed by the tenant, the landlord is required to provide evidence of the required permits or approvals.

The permits or approvals in place at the time the Notice to End Tenancy is issued must cover an extent and nature of work that objectively requires vacancy of the rental unit. The onus is on the landlord to establish evidence that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued.

“Permits and approvals required by law” can include demolition, building or electrical permits issued by a municipal or provincial authority, a change in zoning required by a municipality to convert the rental unit to a non-residential use, and a permit or license required to use it for that purpose. For example, if the landlord is converting the rental unit to a hair salon and the current zoning does not permit that use, the zoning would need to be changed before the landlord could give notice.

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

July-19

If a required permit cannot be issued because other conditions must be met, the landlord should provide a copy of the policy or procedure which establishes the conditions and show that the landlord has completed all steps possible prior to obtaining vacancy.

If permits are not required for the work, a landlord must provide evidence, such as confirmation from a certified tradesperson or copy of a current building bylaw that permits are not required but that the work requires the vacancy of the unit in a way that necessitates ending the tenancy.

Some local governments have additional requirements, policies and bylaws that apply when landlords are performing renovations to a rental unit. Landlords should check with the local government where the rental unit is located to determine the requirements and submit evidence of meeting these requirements.

Additionally, strata corporations may require certain permits and approvals before a rental unit can be renovated or repaired or converted to a non-residential use and there may be strata bylaws that prohibit the rental unit from being used for a non-residential purpose. If a strata bylaw requires the landlord to obtain permission before renovating the rental unit, the landlord must have that permission in place before giving notice. If a bylaw prohibits the landlord from using the rental unit for a non-residential purpose, the bylaw would need to be changed or the rental unit exempted from the bylaw before giving notice.

C. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and 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 (s.32(1)).

If a landlord gives a notice to end tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs of an extent or nature that required vacancy, this may suggest the landlord is not acting in good faith in a present case.

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

July-19

If the landlord is planning to do renovations or repairs and claims that permits are not required, this raises the question of whether the landlord intends in good faith to renovate or repair the rental unit in a manner that requires vacant possession.

The onus is on the landlord to demonstrate that the planned renovations or repairs require vacant possession, and that they have no other ulterior motive.

D. DEMOLITION

Section 49(6)(a) of the RTA allows a landlord to end a tenancy to demolish a rental unit. Demolition means the complete and irreversible destruction of the rental unit. Usually, but not always, this involves the destruction of the building containing the rental unit. This may also involve partial demolition of a building so that the rental unit ceases to exist.

If the tenancy is ending under section 49(6)(a), the tenant has no right of first refusal to enter into a new tenancy agreement with the landlord for the rental unit.

E. RENOVATIONS OR REPAIRS***Vacancy requirement***

Section 49(6)(b) allows a landlord to end a tenancy to renovate or repair a rental unit in a manner that requires the rental unit to be vacant.

In *Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator)* (2007 BCSC 257), the BC Supreme Court found that “the renovations by their nature must be so extensive as to require the rental unit to be vacant in order for them to be carried out.” The Court found “vacant” to mean “empty”. The Court also 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.

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, according to the Court of Appeal, the tenant’s willingness to move out and return to the unit later is not sufficient evidence to establish objectively whether vacancy of the rental unit is required.

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.

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

July-19

Renovations or repairs objectively and reasonably requiring vacant possession

Renovations or repairs that objectively and reasonably require the rental unit to be vacant to carry them out could include renovations or repairs that will:

- make it unsafe for the tenants to live there (e.g., the work requires extensive asbestos remediation) for a prolonged period; or
- result in the prolonged loss of an essential service or facility (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. For example, re-piping an apartment building can usually be done by shutting off the water to each rental unit for a short period of time and carrying out the renovations or repairs one rental unit at a time. As long as the tenant provides the landlord with the necessary access to carry out the renovations or repairs, then the tenancy does not need to end.

Cosmetic renovations or repairs that are primarily intended to update the decor or increase the desirability or prestige of a rental unit are rarely extensive enough to require a rental unit to be vacant. Some examples of cosmetic renovations or repairs include:

- replacing light fixtures, switches, receptacles, or baseboard heaters;
- painting walls, replacing doors, or replacing baseboards;
- replacing carpets and flooring;
- replacing taps, faucets, sinks, toilets, or bathtubs;
- replacing sinks, backsplashes, cabinets, or vanities.

A list of common renovations or repairs and their likelihood of requiring vacancy are located in Appendix A.

F. RIGHT OF FIRST REFUSAL

If the tenancy is being ended under section 49(6)(b) 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 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 gives the landlord this notice, the landlord must complete form [#RTB-35 "45 Day Notice of Availability"](#) and give it and a tenancy agreement that will commence on the availability date to the tenant at least 45 days before the renovations or repairs are finished.

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

July-19

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.

If the landlord fails to comply with the requirements above or does not allow a tenant to exercise their right of first refusal the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the previous tenancy agreement unless there are extenuating circumstances.

G. CONVERTING TO A NON-RESIDENTIAL USE

Non-residential use means something other than use as living accommodation. However, sometimes use as a living accommodation is secondary, incidental or consequential to a non-residential use. For example, correctional institutions are facilities that incarcerate persons convicted of criminal offences – a non-residential use – but they also provide living accommodation to incarcerated persons. Similarly, community care facilities provide 24-hour institutional care to persons and, in doing so, must also provide living accommodation to those persons. These facilities are considered non-residential even though they provide living accommodation because this use is consequential to their primary institutional use.

Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office.

Holding the rental unit in vacant possession is the absence of any use at all. A landlord cannot end a tenancy for non-residential use to leave the rental unit vacant and unused.

H. COMPENSATION FOR ENDING TENANCY FOR LANDLORD’S USE

Both the RTA and MHPTA require a landlord who gives a notice to end tenancy for landlord’s use to pay compensation to the tenant for ending the tenancy. For more information, see [Policy Guideline 50 – Compensation for Ending a Tenancy](#).

I. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),

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

July-19

the tenant may seek an order that the landlord pay the tenant an amount of additional compensation set by the RTA or the MHPTA Regulations. A landlord may only be excused from these requirements in extenuating circumstances.

For more information on this compensation, see [Policy Guideline 50](#).

A. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
new	new	New policy guideline	2019 -07 -08

Change notations

am = text amended or changed

del = text deleted

new = new section added

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

July-19

APPENDIX A: COMMON RENOVATIONS OR REPAIRS

These are examples of common renovations or repairs that may require permits or approvals. This information is provided to act as guidance, acknowledging that each building is unique and evidence may be presented that contradicts this table.

Type of Renovation or Repair	Disruption to tenants	Requires Vacancy?
Electrical		
Electrical service replacement	Usually minimal	Unlikely
Replacing receptacles and switches	Usually minimal	Unlikely
Rewiring a circuit	Usually minimal	Unlikely
Full rewire of the rental unit	May be significant	May require vacancy
Heating		
Boiler/furnace replacement	Usually minimal	Unlikely
Hydronic heating system upgrades	Usually minimal	Unlikely
Electric baseboard heater replacement	Usually minimal	Unlikely
Other Mechanical		
Elevator modernization	Usually minimal	Unlikely
Fire sprinkler installation/replacement	May be significant	May require vacancy
Plumbing		
Re-pipe	Usually minimal	Unlikely
Replacing faucets and fixtures	Usually minimal	Unlikely
Replacing bathtubs/toilets	Usually minimal	Unlikely
Structural/Exterior		
Exterior window/glass door replacement	Usually minimal	Unlikely
Roof replacement	Usually minimal	Unlikely
Building envelope repair/remediation/	Usually minimal	Unlikely
Exterior painting	Usually minimal	Unlikely
Balcony repair/remediation	Usually minimal	Unlikely
Seismic upgrades	Usually minimal	Unlikely
Demolishing load bearing walls	May be significant	May require vacancy

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

July-19

Type of Renovation or Repair	Disruption to tenants	Requires Vacancy?
Interior		
Replacing cabinets/vanities/countertops	Usually minimal	Unlikely
Replacing backsplashes	Usually minimal	Unlikely
Interior painting	Usually minimal	Unlikely
Replacing interior doors	Usually minimal	Unlikely
Replacing flooring/baseboards	Usually minimal	Unlikely
Replacing appliances	Usually minimal	Unlikely
Adding appliances	Usually minimal	Unlikely
Demolishing a non-load bearing wall	Usually minimal	Unlikely
Minor asbestos remediation	Usually minimal	Unlikely
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy