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

July-24

In This Guideline:

A. Takeaway

This policy guideline addresses ending a tenancy to demolish, renovate, or convert a rental unit to a permitted use.

B. Related Guidelines

Policy Guideline 33: Ending a Manufactured Home Park Tenancy Agreement - Landlord Use of Property

Policy Guideline 50 – Compensation for Ending a Tenancy

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C. Legislative Framework

Residential Tenancy Act (RTA)	*Manufactured Home Park Tenancy Act* (MHPTA)
• section 49 (6) • section 49.2	• section 42 (1)

Section 49 (6) of the 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:

a) demolish the rental unit;

b) convert the residential property to strata lots under the *Strata Property Act*;

c) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;

d) convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or

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

Except in the case of demolishing the rental unit, the landlord must use the rental unit for the purpose the tenancy was ended for at least 12 months beginning within a reasonable period after the effective date of the notice to end tenancy. This applies to notices to end tenancy given on or after April 3, 2024. For notices given before this date, the period is six months.

Section 49.2 of the RTA (in effect as of July 1, 2021) allows a landlord to apply for an order to end the tenancy and an order of possession if all of the following apply:

a) the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit(s)

b) the renovations or repairs require the unit(s) to be vacant

c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit(s) or the building in which the rental unit(s) are located

d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement

If an arbitrator is satisfied that all of these criteria are met, then they must grant an order ending the tenancy and issue an order of possession. Such an order must not end the tenancy earlier than 4 months after the date it was made.

Section 49.2 (2) states that if there are renovations or repairs being done to more than one rental unit in a building, a landlord must make one application for orders with the same effective date.

Section 42 (1) of the 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).

D. Permits and Approvals Required by Law

"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; or
- a permit or license required to use it for a new 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 under section 49 (6) (f) of the RTA.

Strata corporations may require certain permits and approvals before a rental unit can be renovated or repaired or converted to a non-residential use. There may also 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 applying to the RTB to end the tenancy under section 49.2 of the RTA. If a strata

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 a landlord gives a notice to end tenancy under section 49 (6) of the RTA.

Some local governments may have additional policies and bylaws that apply when landlords are performing renovations or repairs to a rental unit. In general, it is the municipality, and not the Residential Tenancy Branch (RTB), that is responsible for enforcing its policies and bylaws. RTB will only consider this to the extent the policies and bylaws impact on or create additional required permits and approvals for the repairs and renovations themselves. Landlords should check with the local government where the rental unit is located as they may face other legal consequences if they fail to do certain things even if an order of possession is granted under the RTA.

When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they 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.

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. A permit that was valid at the relevant time but that has expired prior to the dispute resolution hearing will not always be considered a failure to obtain the necessary permits and approvals. A landlord may provide evidence of their efforts to obtain an extension of the permit and an arbitrator will consider that evidence and the likelihood of the permit being renewed in making a determination about whether all necessary permits and approvals have been obtained. In some circumstances, an arbitrator may adjourn the hearing while the relevant authority reaches a decision on renewing a permit.

The permits or approvals must cover the extent and nature of work that requires vacancy of the rental unit(s) or the planned conversion. A landlord does not need to show that they have every permit or approval required for the full scope of the proposed work or change. For instance, a landlord can issue a Notice to End Tenancy

under section 42 of the MHPTA if they have the permits and approvals required to convert the park to a residential use other than a park, even if they do not yet have all of the permits required to build the planned single-family home on that land.

If a required permit cannot be issued because other conditions must first 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 issuing a Notice to End Tenancy or applying to the RTB.

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.

E. Good Faith

In *Gichuru v Palmar Properties Ltd*., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: (see *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165; *Doell v. Doe*, 2022 BCSC 655; and *Sandhu v Gill*, 2024 BCSC 412).

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 (section32 (1) of the RTA). However, conversion of a rental property to another use that is motivated, in part, by avoidance of new and significant costs does not automatically result in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371.

If a landlord applies for an order to end a 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 that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

F. 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.

G. Caretaker, Manager, or Superintendent Use

Section 49 (6) (e) of the RTA allows a landlord to end a tenancy to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The landlord must have a written agreement with the caretaker, manager or superintendent outlining their duties with respect to the residential property.

When a landlord gives a notice to end tenancy to convert the rental unit for use by a caretaker, manager or superintendent of the residential property, the notice must be generated using the website maintained by the Residential Tenancy Branch (“the web portal”). Notices generated using the web portal will have a Notice ID. This requirement applies to notices to end tenancy received by a tenant, based on the date of deemed receipt, on or after July 18, 2024. Notices deemed received before this date can be on form #RTB-29. If a tenant is deemed to have received a form #RTB-29 on or after July 18, 2024, to end a tenancy to convert for caretaker use, that notice has no effect; the landlord must give a new notice generated using the web portal.

H. Renovations or Repairs

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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. While any period of time in which the unit must be vacant may be sufficient to meet this requirement, as discussed below, the landlord must also prove that the only reasonable way to achieve the necessary vacancy is by ending the tenancy agreement.

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).

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.

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

include:

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

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

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

Renovations and repairs are important to the life cycle of a building. As buildings age this work is necessary to ensure the rental unit and the building in which it is located remain safe for the tenants. Some examples of these necessary renovations or repairs include:

- Undertaking seismic upgrades
- Updating electric wiring to code
- Installing or replacing a sprinkler system to ensure the building meets codes related to fire safety

Ending the tenancy agreement is the only reasonable way to achieve the necessary vacancy

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.

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.

I. 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 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 commences on the date the rental unit will be available to the tenant at least 45 days before the renovations or repairs are finished.

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, 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.

Some municipalities may have bylaws that impact on the allowable terms for the new tenancy agreement. The RTB does not resolve disputes relating to whether the new tenancy agreement complies with these bylaws. The RTB will only consider whether the new tenancy agreement complies with the RTA. So long as the landlord has provided a new tenancy agreement that complies with the RTA, the tenant is not entitled to compensation respecting the right of first refusal.

J. 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.

Non-residential use does not include use as short-term living accommodation. For example, a landlord cannot end a tenancy for non-residential use, to convert the rental unit to vacation or travel accommodation. Conversion of a rental unit to vacation or travel accommodation is considered a residential use, since the purpose would be to provide temporary living accommodation to a person.

Other examples of non-residential use include using the rental unit as a place to carry on business, such as a dental office. Some live/work spaces may also be considered non-residential if the majority of the unit must be devoted to commercial enterprise based on municipal requirements: *Gardiner v. 857 Beatty Street Project*,

2008 BCCA 82.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.

K. 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 or receives an order to end a tenancy for renovations and repairs to pay compensation to the tenant for ending the tenancy. For more information on compensation requirements under the RTA, see Policy Guideline 50 – Compensation for Ending a Tenancy.

For more information on compensation requirements under the MHPTA see Policy Guideline 33: Ending a Manufactured Home Park Tenancy Agreement - Landlord Use of Property.

L. Consequences for Not Using the Property for the Stated Purpose

Residential Tenancy Act

A tenant may apply for an order for compensation under section 51 of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished 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 12 months beginning within a reasonable period after the effective date of the notice (except for demolition).

A tenant may apply for an order for compensation under section 51.4 of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for

its stated purpose for at least 12 months under sections 49 (6) (c) to (f).

Under sections 51 (3) or 51.4 (5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances.

For more information see Policy Guideline 50 – Compensation for Ending a Tenancy.

Manufactured Home Park Tenancy Act

A tenant may apply for an order of compensation under section 44 of the MHPTA if the landlord who ended their tenancy under section 42 of the MHPTA did not:

- take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy.

The onus is on the tenant to prove that the landlord has not taken steps to accomplish the stated purpose for ending a tenancy under section 42 (1) of the MHPTA.

Under section 44 (3) of the MHPTA, a landlord may only be excused from these requirements in extenuating circumstances. For more information see Policy Guideline 33: Ending a Manufactured Home Park Tenancy Agreement - Landlord Use of Property.

M. Policy Guideline Intention

The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

N. Changes to Policy Guideline

Section	Change	Notes	Date Guideline Changed
new	new	New policy guideline	2019 -07 -08
all	am	Updated to reflect legislative	2021-07-01

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		changes	
All	Am	Formatted to new template	May 2024
H	Am	Updated to clarify that non-residential use does not include use as short-term living accommodation	May 2024
J	Am	Updated to reflect amendments to the occupancy period	May 2024
C	Am	Moved content from Section D related to 12 month occupancy period to Section C	July 18, 2024
D	Del	Moved content from this section to Section C	July 18, 2024
G	New	Added section on ending a tenancy for caretaker, manager, or superintendent use	July 18, 2024
L	Am	Revised 6 month occupancy to 12 months	July 18, 2024
E	Am	Added links to case law	July 18, 2024

Change notations
am = text amended or changed
del = text deleted
new = new section added

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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

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Type of Renovation or Repair	Disruption to tenants	Requires 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	May be significant	May require vacancy
Demolishing load bearing walls	May be significant	May require vacancy
Interior		
Replacing cabinets/vanities/countertops	Usually minimal	Unlikely
Replacing backsplashes	Usually minimal	Unlikely

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Type of Renovation or Repair	Disruption to tenants	Requires Vacancy?
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
Major asbestos remediation	May be significant	May require vacancy
Full interior wall and ceiling demolition	Likely significant	Likely requires vacancy