



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PFR

### Introduction

The Landlord seeks orders of possession for repair or renovation pursuant to s. 49.2 of the *Residential Tenancy Act* (the “Act”).

A.C. appeared as agent for the Landlord. P.F., N.H. (agent for the named respondent K.G.), S.F., and A.F. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised having served each of the named respondent tenants with the Notice of Dispute Resolution and the Landlord’s evidence. Each of the respondent tenants acknowledged receipt of the Landlord’s application materials and raised no objections with respect to service. Due to its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the named respondents were all sufficiently served with Landlord’s applications.

### Issue to be Decided

- 1) Is the Landlord entitled to orders of possession for renovation or repair?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent, the respondent tenants and K.G.'s agent confirmed the relevant details with respect to the individual tenancies, namely that they are all monthly periodic tenancies with rent due on the first day of the month. I am advised by the parties that residential property in question has two structures, with P.F. renting the front structure and K.G. and S.F. renting upper and lower portions respectively of the back structure.

The Landlord's agent testified that the residential property is of significant age and that he has made efforts to keep it maintained over the years. However, issues have arisen with respect to the plumbing in both structures. The Landlord's agent testified that there was a water pipe leaked in S.F.'s basement rental unit and another water pipe leaked in P.F.'s rental unit in the front structure. The respective tenants both confirmed that this had occurred.

The Landlord's agent testified that he obtained advice from a plumber that the copper piping in the buildings would be more prone to leaks given its age. The Landlord's agent testified that the cost of the repairs to the two leaks was approximately \$4,000.00 such that the replacement is necessary given the increased likelihood of leaks in the future.

The Landlord's agent indicates that it the Landlord's intention to replace the piping in both structures going back to the water service at the street. The Landlord's evidence includes a permit for the plumbing work. The Landlord's agent further indicates that the work will require the walls to be opened, which is an issue given the age of the property and the likelihood that asbestos is present. I enquired whether there had been any testing for asbestos, the Landlord's agent indicates that there had not been but that the issue was flagged to him by the plumber. Additional work, I am told, will need to be undertaken to access the pipes, including removing cabinetry in the kitchens and gutting of the bathrooms.

The Landlord's agent further testified that there is also an intention to upgrade the electrical within the buildings as the walls will be opened for the plumbing work. I am told that the Landlord has not obtained an estimate from an electrician nor has a permit been pulled for that work.

The Landlord's agent testified that rental units would need to be vacant as water service will be shut off for the whole property and given the risk of asbestos, the rental units could not be occupied while remediation work is undertaken. I am advised that the repairs could take about 6 weeks to complete, but the Landlord's agent emphasized that he was uncertain given issues scheduling tradespeople and the scope of work to be undertaken.

The respondent tenants did not dispute any of the submissions from the Landlord's agent nor did they indicate a willingness to temporarily vacate the rental unit. S.F. testified that there had recently been two inches of waste come up through the drain into his bathtub, such that he understood that there were issues with the plumbing that needed to be addressed. It was emphasized by the parties that there was a good landlord-tenant relationship. The Landlord's agent says the Landlord would prefer to continue the tenancies but that the work is necessary under the circumstances.

### Analysis

The Landlord seeks orders of possession for renovation or repair.

Pursuant to s. 49.2(1) of the *Act*, a landlord may obtain an order of possession ending the tenancy by demonstrating the following:

- 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; and
- d. the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

If all the criteria have been demonstrated by the landlord, an order of possession must be granted as specified by s. 49.2(3) of the *Act*. If an order of possession is granted, s. 49.2(4) of the *Act* requires that the effective date of the order be no earlier than 4 months after the date the order is made, be the day before rent is payable under the tenancy agreement, and in the case of a fixed term tenancy, not earlier than the end of the term set in the tenancy agreement.

Under the circumstances, I find that the Landlord has a good faith intention to repair the plumbing in the rental unit and has the permit necessary to undertake that work. There is no dispute between the parties that the property in question is of an age where the plumbing has degraded to the point where water leaks from the piping has become more likely. This is clearly evidenced by the two recent water leaks, the first occurring in the back structure and the second in the front structure. Given the nature of the issue, I have little difficulty also finding that the repairs are necessary to prolong or sustain the use of the residential property.

Policy Guideline #2B provides guidance with respect to ending tenancies for renovation or repair and provides specific guidance with respect to the vacancy requirement imposed by s. 49.2(1) of the *Act*, stating the following:

*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.

Though the guidance is that re-piping can usually be done without requiring vacant possession, I accept the testimony from the Landlord's agent that there will likely be a need for asbestos remediation throughout the rental units. This will make occupancy impossible without risking the tenants' health and safety. I am advised and accept that the water service to the entire property will need to be interrupted, at least for a time, to replace plumbing. Also, the need to remove cabinetry and bathroom fixtures to access the plumbing in the walls further reinforces that the tenants could not continue to occupy the rental units while the work is undertaken. I find that the Landlord has established that the rental units must be vacant for the repairs.

Finally, I find that ending the tenancies is the only reasonable way to achieve the necessary vacancy. The scope of the work, as described to me, is extensive and may take longer than 6 weeks depending on the issues that present themselves when the walls are opened to access the plumbing. Though the Landlord has not obtained permits for the contemplated electrical work, it would be reasonable to undertake that work once the walls have been opened. This may further elongate the need for vacancy. None of the tenants indicated a willingness to temporarily vacate the rental units, which may counter the argument that the only means of achieving vacancy is through ending the tenancy.

I find that the Landlord has established that it is entitled to orders of possession for repairs under s. 49.2 of the *Act* and shall obtain those orders. All the tenancies are on a month-to-month basis with rent due on the first day the month. Due to this and pursuant to s. 49.2(4) of the *Act*, the orders of possession will be effective on February 28, 2023.

### Conclusion

The Landlord has established that it is entitled to orders of possession under s. 49.2 of the *Act*. The respondent tenants shall provide vacant possession of their respective rental units to the Landlord by no later than **1:00 PM on February 28, 2023**.

It is the Landlord's obligation to serve the order of possessions on each respective tenant. If the tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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: October 19, 2022

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Residential Tenancy Branch