



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      PFR

### Introduction

On October 23, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 49.2 of the *Residential Tenancy Act* (the “Act”).

L.K. attended the hearing as an agent for the Landlord, and indicated that Tenant C.K.’s tenancy ended on or around December 14, 2022, by way of a mutual agreement to end tenancy. As such, the Style of Cause on the first page of this Decision has been amended to remove this person as a Respondent.

Tenants C.S., J.L., and H.K. attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing and evidence packages was discussed, and there were no issues concerning service. As such, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

All three Tenants confirmed that they did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession under Section 49.2 of the *Act*?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

In the Application, the Landlord was asked to describe the renovations and why vacant possession is required. The Landlord provided the following written submission:

Electrical at the property is in severe need of upgrading. the standard for a single dwelling is a 100A service, whereas this property has a 60A service for all 5 units. During this upgrade, all electrical will be brought up to code including a full re-wiring of all units, as well as fire alarm system install to bring the property up to current electrical code. The scope of this work will require all drywall and insulation to be removed, as well as flooring being replaced. **[Reproduced exactly as written]**

L.K. advised that the property was built in 1958, and he essentially mirrored the information contained in the written submission. He testified that a contractor was brought in to assess the electrical service on the property, and it was determined that the property needed to be vacant in order to facilitate the upgrade of the electrical system, as considerable amounts of drywall and flooring will be required to be removed, and the power will be disconnected for a significant length of time. He referenced the contractor's letter and the approved permit, submitted as documentary evidence, to support this position. He estimated that additional work will be completed as well, such as: the installation of a interconnected fire alarm system, upgrade of the gas and plumbing, and repair of the roof. He testified that the complete renovation would take approximately four-to-five months in total.

Tenant C.S. advised that the only breaker panel on the property is in his rental unit, that it provides a 200-amp service, and that the electrician's letter cannot be true as this person has never entered his rental unit to assess this panel. He testified that he brought this to the Landlord's attention approximately two and a half weeks prior to the hearing; however, nothing came of this. He did not submit any documentary evidence to support any of his submissions.

Tenant J.L. referenced some pictures submitted by the Landlord, and questioned where the insulation picture was taken. She submitted that her rental unit was renovated approximately nine and a half years ago, and that unit # 5 was renovated approximately five years ago.

Tenant H.K. acknowledged that the renovations are necessary; however, she testified that the individual units are so small, that there is no drywall in the units, and that the units are separated by cinder blocks. She questioned the four-to-five-month timeframe as she has seen other renovation projects being completed in weeks. As well, she stated that she could not find any other permits that were granted to the Landlord, other than what was submitted as documentary evidence.

L.K. acknowledged that the breaker panel may provide 200-amp service; however, this does not change the scope of the project to upgrade the entire property to a 400-amp service.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this Decision are below.

Section 49.2 (1) of the Act, under which the Landlord makes this Application, states:

*Subject to Section 51.4 [tenant's compensation: section 49.2 order], a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:*

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

I find it important to note that the Landlord must provide evidence to prove each of the above-cited four elements. After reviewing the evidence, it is clear to me that the Landlord has all the necessary permits and approvals to upgrade the electrical system and rewire to have “linked working smoke/C02 detectors in each unit.” While I acknowledge C.S.’s submission and skepticism about the current breaker panel, there was no documentary evidence to support his testimony. In the absence of any documentary evidence to the contrary, it is assumed that the Landlord plans, in good faith, to complete these renovations. Given the extensive nature of them, which will involve shutting off the power, demolishing walls, and removing flooring, it is reasonable to conclude that the rental units will need to be vacant for at least 45 days to complete the electrical component of the renovations, and at least an additional three to four months to complete the remainder of the renovations.

As Policy Guideline # 40 provides that the useful life of panel and wiring is 15 years and that the useful life of rewiring is 25 years, without any evidence that this has been done in the past, I find that the type of upgrade to the electrical system being undertaken is necessary to both prolong and sustain the use of the rental units.

At this point, I would like to address J.L.’s statement that her rental unit was renovated almost ten years ago and that another rental unit was renovated approximately five years ago. While this may have been the case, and while those rental units may be in a condition that is presently suitable for occupation, this is not a factor that may be considered in this type of Application.

With respect to H.K.’s submissions, I note that she acknowledged that the renovations were necessary. As well, while she denied that there was drywall in the rental units, it is reasonable to conclude that substantial wiring through walls, ceilings, and floors would likely be necessary. Moreover, as there is no evidence that H.K. is a construction professional, I give no weight to her submission that it is her belief that this work will take only weeks to complete.

Ultimately, it is my finding that the only reasonable way to achieve vacancy is to end the tenancies. Expecting the Tenants to continue to pay rent while the rental unit is uninhabitable for four-to-five months, or expecting the Landlord to “hold” the property and move the Tenants around during the renovations, would not be reasonable. To that end, ending the tenancies under this Section of the *Act* is the only reasonable option, in my opinion.

Having determined that all of the requirements in Section 49.2 (1) of the *Act* are met, I must grant an Order ending a tenancy and an Order of Possession. Therefore, it is Ordered that the tenancies will end on July 31, 2023, unless the Tenants choose to end it earlier under Section 50 of the *Act*.

An Order of Possession with an effective date of July 31, 2023, is issued with this Decision to the Landlord. The Landlord must serve a copy of the Order of Possession upon the Tenants no later than March 31, 2023.

Conclusion

The Application for Orders under Section 49.2 of the *Act* is granted.

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: March 22, 2023

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Residential Tenancy Branch