



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      PFR

### Introduction

This hearing dealt with the Landlord's application under section 49.2 of the *Residential Tenancy Act* (the "Act") for vacant possession of the rental units to perform renovations or repairs.

The Landlord's agents KG and ML, as well as two of the Tenants, ERG and CR, attended this hearing and gave affirmed testimony.

### Preliminary Matter: Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord submitted registered mail tracking numbers as proof of service of the Landlord's notice of dispute resolution proceeding and evidence package sent to each of the Tenants on August 28, 2023. The Landlord served the Tenants with additional documentary evidence on November 6, 2023. ERG and CR confirmed receipt of the Landlord's dispute resolution documents and did not raise any issues with respect to service. I find the Tenants were served with the Landlord's dispute resolution documents in accordance with sections 88 and 89 of the Act. None of the Tenants had submitted an evidence package for this application.

### Preliminary Matter: Removal of Respondents

The Landlord's agents confirmed that tenants in 3 of the 9 units originally included in this application have already vacated their suites. The Landlord submitted an amendment form to remove those tenants as respondents. Accordingly, I have not included those tenants and units as part of this decision.

### Issue to be Decided

Is the Landlord to orders of possession of the rental units for renovations or repairs?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental property was built in 1965 and consists of 12 row house units across two buildings. The Tenants are on month-to-month tenancies with rent due on the first day of each month.

The Landlord took over the rental property in July 2023. On August 16, 2023, the Landlord sent a notice to the Tenants advising that there will be major renovations to each of the units. The renovations will involve each unit being fully gutted and rebuilt from the inside out. During the time that work is being done, the heat, electrical, and water will need to be disconnected for extended periods of time. The windows will be removed and replaced, the kitchens and bathrooms will be completely gutted, new drainpipes installed, the boiler will be removed and an alternative heat source installed, and a new electrical service will be installed.

The Landlord submitted a set of plumbing and electrical permits for each building, with the following scope of work:

- install plumbing fixtures, including interior piping, hydronic heating, and boiler
- add an additional 200-amp service and upgrading each suite panel to 100 amps

The Landlord provided photos of water damage and rot found in the structural framing, flooring, and subflooring of some units that are currently vacant. The Landlord submits that the cause was faulty plumbing, and that similar conditions are expected for the rental units.

The Landlord provided a statement from its carpenter, DK. This statement indicates that extensive water damage to the structural building components has been uncovered in several of the units, mostly found in the vicinity of kitchens and bathrooms. According to DK, the repairs and renovations required for the rental property will necessitate the

shutdown of heat, hydro, and water in each unit for several weeks. The bathroom and kitchen in each unit must be completely gutted and brought back to the studs, so that structural, electrical, and plumbing repairs can be safely completed. Afterwards, interior finishing such as drywall, kitchen and bathroom fixture installation, flooring, and paint must be done from scratch. According to DK, it is not possible for anyone to safely live in the unit while this work is being done, nor would it be appropriate or safe to have people attempting to reside in such an active and busy construction site.

The Landlord also provided a statement from its plumber, GH. According to this statement, the boilers currently in use at the rental property are out of date and past their expected lifespan. A replacement or update of the heating system in both buildings is long overdue. The work will require the boiler heating system to be disconnected and drained for multiple days, assuming there are no unexpected delays caused by the poor condition of the buildings and other required plumbing and electrical repairs. According to GH, wholesale replacement of the heating systems will not be possible while the units are being lived in.

ML testified that the rental property requires extensive repairs and upgrades to bring it to a safe and habitable standard. ML stated that the boilers are original to the buildings and will be upgraded to heat pumps for safety and energy efficiency. ML confirmed that the electrical service will be upgraded from 50 to 100 amps and the units. ML estimated that the repairs and renovations to the rental units will take 3 or 4 months to complete. ML testified that water and hydro will need be cut from each unit for at least two weeks, if not longer. ML testified that the roof needs to be replaced, and all tenants will need to move out. ML confirmed that no permits are required for roof replacement.

ERG noted the points mentioned by the Landlord and acknowledged that the buildings need a lot of repairs. ERG wanted to know how much time she would have to find a new place.

CR also had questions about the timeline. CR expressed that she has been looking and not finding any results. CR indicated that she may ask a motel for a monthly rate for a few months. CR mentioned that she is on a fixed income and may not be able to afford the new rate the Landlord intends to charge after the renovations.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Under section 49.2(1) of the Act, 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 will address each of these requirements in turn.

*a. Good Faith Intention and Necessary Permits and Approvals*

In this case, I am satisfied that the Landlord intends in good faith to renovate and repair the rental units. I find there is no evidence of an ulterior motive, or that the Landlord intends to re-rent the rental units for more rent without carrying out the proposed renovations or repairs. Additionally, I am satisfied that the Landlord has all of the necessary permits and approvals required by law to carry out the proposed work, which are the permits required for the plumbing installations and the electrical upgrades.

*b. Vacancy Requirement*

Based on ML's testimony and DK's statement, which I do not find the Tenants to dispute, I accept that the plumbing, electrical, and interior finishing work intended by the Landlord will necessitate the shutdown of heat, hydro, and water in each unit for at least a couple of weeks. I find the prolonged loss of these essential services will require the rental units to be vacant during the renovation period. Furthermore, considering the age of the buildings and the likelihood of uncovering mould and structural rot, I am satisfied that it would be unsafe for the Tenants to reside in the rental units during the renovation period. Therefore, I find the renovations and repairs intended by the Landlord will require the rental units to be vacant.

*c. Necessity to Prolong or Sustain Use*

I find the renovations and repairs proposed by the Landlord are not merely cosmetic in nature but are necessary to prolong or sustain the use of the rental units and the property. I accept ML's testimony and GH's statement, which I do not find the Tenants to dispute, that the current boilers are past their expected lifespan. I find the Landlord intends to add an additional 200-amp service for each building and upgrade each suite panel to 100 amps. I find the work proposed by the Landlord includes necessary structural repairs as well as upgrades to the heating and electrical systems, all of which will prolong and sustain the use of the rental property.

*d. Only Reasonable Way is to End Tenancy*

I accept the Landlord's evidence that the planned work will require 3 or 4 months to complete. Given this expected timeframe and considering the extensive and multifaceted nature of the intended renovations and repairs, I find it is reasonable to end the tenancies so that the Landlord will have vacant possession of the rental units to perform the work. Based on the evidence presented, I do not find it would be reasonable to continue the tenancies under alternative access or living arrangements during the renovation period.

*e. Outcome*

For the reasons given above, I conclude that the Landlord is entitled to orders of possession of the rental units for renovations and repairs under section 49.2 of the Act.

Pursuant to section 49.2(3) of the Act, I grant the Landlord orders of possession of the rental units effective 1:00 pm on April 30, 2024.

I remind the parties that under section 51.4(1) of the Act, a tenant who receives an order ending a tenancy under section 49.2 of the Act is entitled to receive from the landlord on or before the effective date of the director's order an amount equal to **one month's rent** payable under the tenancy agreement. The tenant may withhold this amount from the last month's rent.

I further remind the parties that under section 51.2 of the Act, where a tenancy is being ended under section 49.2 of the Act and the 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 the renovations or repairs are complete. To exercise their **right of first**

**refusal**, the tenant must give the landlord notice in the approved form before vacating the rental unit. For more information, the parties may refer to Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use. The parties may also contact the Residential Tenancy Branch.

### Conclusion

The Landlord's application is successful.

Pursuant to section 49.2(3) of the Act, I grant the Landlord orders of possession of the rental units effective **1:00 pm on April 30, 2024**. The Tenants must be served with the orders as soon as possible. If the Tenants or anyone on the premises fail to comply with these orders, these orders may be filed and enforced in the Supreme Court of British Columbia.

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: December 20, 2023

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Residential Tenancy Branch