



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      PFR

### Introduction

On November 20, 2023, 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”).

The Landlord attended the hearing, and both Tenants 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 of the Notice of Hearing package. As all parties indicated that they had reviewed and were prepared to respond to each other’s evidence, I have accepted all of the parties’ evidence and will consider it when rendering this Decision.

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.

All parties agreed that the tenancy originally started on October 1, 2020, that the rent was currently established at an amount of \$1,552.00 per month, and that it was due on the first day of each month. A security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

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

I am acting in good faith. I honestly intend to renovate so extensively that the suite must be vacant. 2020 plans to replace 50 year old kitchen/bathroom cupboards, fixtures, appliances and flooring in suite. High lead levels in kitchen/bathroom flooring require hazardous environmental removal deeming unit UNSAFE. Suite will be UNINHABITABLE for prolonged period of time with loss of essential utilities - NO water NO toilet NO stove NO fridge - requiring vacant possession. **[Reproduced exactly as written]**

The Landlord advised that she has been renting the rental unit for 33 years and that she had been planning to renovate it this whole time. She testified that the cupboards are 50 years old, that she must coordinate the renovations herself, and that she must do the painting herself now as well. She stated that there are no permits required to complete this work. She advised that the renovations are extensive, and that the replacement of the flooring tiles is unsafe due to the high lead content within them. She stated that the anticipated renovations would render the rental unit uninhabitable for a significant amount of time as there will be no utilities.

When she was asked to specifically outline the renovations, she submitted that the bathroom and kitchen cupboards, the tile flooring in the bathroom and kitchen, the carpet in the living room and bedroom, and the appliances would all be replaced. She

stated that every time she showed the rental unit to prospective tenants, they would complain about the age of everything. She testified that her plan is to eventually hold the rental unit for her caregiver or friend.

Tenant B.O. advised that they offered to provide access to the Landlord to do the suggested renovations instead of having to give up occupancy of the rental unit. As well, she testified that the Landlord served them with a Four Month Notice to End Tenancy For Demolition or Conversion of a Rental Unit in December 2022, but the Landlord indicated that she would be re-renting the unit after the renovations were completed. As such, she questioned the Landlord's good faith intention. Furthermore, she noted that the Landlord sent them a note threatening them unless they agreed to sign a Mutual Agreement to End Tenancy. She referenced pictures submitted of the rental unit which demonstrate that while old, the rental unit is still in a functional state.

Tenant A.B. advised that he has extensive experience in construction, that the tile flooring is a small area that can be completed in stages, and that the suggested renovations should not take long.

### 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. As well, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Moreover, Policy Guideline 2B contains an appendix outlining what types of renovations require vacancy. While I acknowledge that the Landlord had been planning to renovate the rental unit for quite some time, I do not find that the Landlord has submitted sufficient documentary evidence to demonstrate that the renovations or repairs are necessary to prolong or sustain the use of the rental unit. Again, while it is possible that the rental unit is dated, it appears as if these renovations are more for cosmetic purposes to update the rental unit. Furthermore, the contemplated renovations proposed by the Landlord all fall under the category of being unlikely to require vacancy as noted in the policy guideline. While I acknowledge that replacing the tile may require vacancy due to the high lead content, I again reiterate that the replacement of the flooring, similar to the other suggested renovations, appears to be a choice by the Landlord, and not a necessity.

In addition, given that the Landlord had no immediate plans for the rental unit after the renovations were completed, other than appearing to want to re-rent it, I find that this further supports a conclusion that the Landlord's intention was to renovate the unit to update it for more rent, and that there was no glaring necessity to do so otherwise.

Ultimately, it is my finding that all of the requirements in Section 49.2(1) of the Act have not been met. As such, the Landlord's Application is dismissed in its entirety.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

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: February 14, 2024

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Residential Tenancy Branch