



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code          PFR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order of possession for the rental unit in order to perform renovations or repair that require the rental unit to be vacant, pursuant to section 49.2 of the Act.

Landlord MM (the Landlord), witness JW, tenant KW (the Tenant), advocate HB and support person JT attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Service of the Notice of Dispute Resolution Proceeding and the Evidence (the Proceeding Package)

The parties each confirmed receipt of the Proceeding Packages and that they had enough time to review them.

Based on the testimonies I find that each party was served with the Proceeding Packages in accordance with section 89(1) of the Act.

### Issue to be Decided

Is the Landlord entitled to an order of possession under section 49.2 of the Act?

### Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed the ongoing tenancy started in May 2010. Monthly rent today is \$680.00, due on the first day of the month. The Landlord collected and holds the \$325.00 deposit.

The Landlord affirmed he intends to do the following renovations in the rental unit (the unit):

- update all the plumbing;
- entirely gut the unit in order to update all the plumbing;
- fix the bathroom's fan and expand the bathroom, as it is small and it contains black mould. The Landlord stated the black mould is a health hazard;
- replace the carpet, as it has water damage and stains;
- replace the old cupboards.

The Landlord testified he estimates the renovation will take 6 months to be completed: "I'm thinking it may be six months". The Landlord said he does not need permits and the unit will be uninhabitable during the renovation, as it will not have water.

The Tenant affirmed the planned renovations are mostly cosmetic and are not necessary to prolong or sustain the use of the unit. The Tenant stated the kitchen and bathroom work properly, she shampooed the carpet, the bathroom's mould is not black mould and the Landlord did not provide evidence that the plumbing needs to be updated.

The Landlord testified he is not a contractor, but he will complete the renovations with his son in their free time and that he does not want to hire a contractor to do this service.

The Landlord submitted a letter from a contractor:

In speaking with [the Landlord] he has described the type of renovation work that he has in mind to return this suite into an attractive functioning unit once again. We have looked at the photos that he has taken from his last bi annual inspection and he relayed the unhealthy and worn out existing condition of the unit in general. He is of the opinion that no one would like to move into living conditions such as these.

The following work is being planned to be accomplished by himself and his son [redacted]. If there are projects that they don't feel comfortable with doing they plan to hire our company [redacted].

The following is planned:

-Removal of all flooring, carpets, linoleum, laminate and replace it with vinyl flooring throughout the suite.

- Complete removal of counters and cabinets in the kitchen area and replace with new. Replace all of the plumbing and appliances taps, sink etc.
- Completely gut the bathroom, replacing the bathtub/shower enclosure, toilet, cupboard and cabinets, replace the window and the dehumidifier fan and venting.
- Removal of all nails in the ceilings and the partition of the suite. Complete repairs to the drywall and then paint the entire suite to cover up all of the damaged walls in the bedrooms that are covered with tape residue which cannot be removed.

These are the repairs that [the Landlord] is planning on accomplishing.  
You do need an electrical permit for any electrical alterations you do. As there are no enforceable building codes on [redacted], he will not require a permit for any of the work that he is planning on accomplishing during this renovation.

The Tenant said the contractor did not enter the unit. The Landlord affirmed the contractor wrote the letter after he saw photographs showing the unit's conditions.

The Landlord stated the Tenant did not allow him to enter the unit to inspect it and was hostile. The Tenant denied these facts.

The Landlord submitted 33 photographs into evidence showing the unit's condition, including stained carpet, damaged windows coverings, minor holes in the walls, mould in the bathroom and damaged cupboards. The Tenant submitted 5 photographs showing floor damage, the carpet and the bathroom with mould.

The Tenant testified the Landlord is trying to terminate the tenancy in bad faith because the rent is below market-rate and that the Landlord can complete the renovation with the tenant living in the unit.

The Landlord confirmed he emailed the Tenant on June 6, 2024. The email states:

2 – You have been living here in excess of 10 years and during that time I have never raised your rent once from \$650.00 / month until last year in August I believe. There is not a question that I could rent that property for \$1,000.00 / month any time I want.

[...]

[Tenant], if I ever get an inappropriate letter like this from you again, or any other crap, I will have to assume that you are not happy with me and the situation you are in living here and believe me, I will do something about it. I have the means. You have disappointed me.

The Landlord said the email dated June 6, 2024 is unrelated to this application and he wants to do the renovations in order to upkeep the unit.

### 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.

Section 49.2(1) of the Act provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the 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.

The Act provides that the director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in section 49.2 apply.

Policy Guideline 2B states: “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.”

I find the Landlord’s testimony about taking 6 months to complete the renovation vague, as the Landlord indicated the “thinks” it will take 6 months to complete the renovation. Thus, I find the Landlord failed to prove the renovations can only be completed in 6 months.

Policy Guideline 2B states:

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.

I find that expanding the bathroom, replacing the carpet, cupboards, wall damage and windows coverings are cosmetic renovations, as explained in policy Guideline 2B. These renovations are primarily intended to update the décor or increase the desirability or prestige of the unit.

The contractor's letter does not indicate the renovations are necessary to prolong and sustain the unit's useful life. I note the contractor wrote the letter based on photographs, as he did not enter the unit.

The photographs show damage that needs to be addressed, but there is no documentary evidence the Tenant needs to vacate the unit or that the damages shown in the photographs require renovation to prolong or sustain the use of the unit.

The Landlord failed to prove that the plumbing needs to be replaced and that the mould in the bathroom is a health hazard, as the Tenant disputed these facts, and the Landlord did not provide documentary evidence regarding these claims.

Considering all the above, I find the Landlord failed to prove the repairs are necessary to prolong or sustain the use of the unit, as required in section 49.2(1)(c) and I dismiss the application for an order of possession. The tenancy continues.

I am not making findings about the other legal requirements of section 49.2(1), as the Landlord failed to prove subitem 'c', and he must prove all of them in order to obtain an order of possession.

For the purpose of educating the Landlord, I note the Tenant is entitled to quiet enjoyment, including freedom from unreasonable disturbance, per section 28(b) of the Act. This landlord's obligation includes communicating using polite and respectful language.

### Conclusion

I dismiss the application 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 *Act*.

Dated: November 5, 2024