



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** ET

### **Introduction**

This application was brought by the landlord seeking an Order of Possession to end the tenancy early under section 56 of the *Act* which permits such applications in circumstances in which it would be unreasonable for the landlord to await an order under section 47 of the *Act*.

### **Issue(s) to be Decided**

This application requires a decision on whether the tenants' alleged activities have sufficiently disturbed and interfered with the landlord to warrant an Order of Possession to end the tenancy early.

### **Background and Evidence**

While this tenancy, a basement suite in the landlords' home, officially began August 1, 2008, the tenants were permitted to take occupancy in mid-July 2008. Rent is \$950 per month and the landlord holds a security deposit of \$475 paid on June 3, 2008.

During the hearing, the landlord gave evidence that the tenants have constantly smoked in the rental unit despite it being made clear that there was to be no smoking. After having given three verbal warnings, she sent the tenant a warning letter dated August 3, 2008 stating that any further smoking in the home would result in a Notice to End.

She stated that, when the smoking continued, she served the tenants with a 30-day Notice to End Tenancy on August 14, 2008, and when that and other disturbances continued, she served another Notice to End for cause on August 26, 2008.

The other disturbances cited by the landlord included loud noise coming from the rental unit often until 5:30 a.m., damage to a vehicle, intrusions into the landlords' living area, and an accumulation of garbage that the tenants have not taken to the curb for pick up since they moved in.

The landlord gave evidence that the smell from smoking has so permeated the house, and her fear of the tenant is such that she and her daughter have been sleeping in their van in the yard.

The tenant acknowledged that she and her daughter are "night owls" and frequently talk unit 3 a.m. but denied that there was constant fighting. She stated that, since an incident between her boyfriend and the landlord on August 26, 2008 (over which she sent a letter of apology for his drunken, rude, angry outburst) he has relocated to Alberta.

She stated that she no longer smokes in the house and the odor may have come from incense and that the damage to the vehicle was caused by the wind blowing a coffee table on to it. The landlord reported that initially, the tenant and her boyfriend had blamed each other for the damage.

### **Analysis**

On balance, I find that the landlords have made every reasonable effort to seek less onerous means of remedying or ending making this tenancy by issuing three verbal warnings, a written warning and two Notices to End Tenancy.

The landlords reached the end of their rope when serving the Notice to End on August 26, 2008 and were subject to threat and abuse from the tenant's boyfriend resulting in the present application for an Order of Possession under section 56 of the *Act*.

I accept the evidence of the landlords that, in spite of their repeated efforts, the tenant continues to smoke in the rental unit, and that the preference for their sleeping in the van comes from genuine concern. I further accept their evidence that they fear the return of the primary tenant's boyfriend based on earlier failed assurances that he would not return or create problems.

### **Conclusion**

I find that the landlord's request to end the tenancy early is justified. Accordingly, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

September 12, 2009

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