



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes

ET

### Introduction

This hearing was scheduled in response to the landlords' application for Dispute Resolution, in which the landlord has applied for an Order of Possession on an Early End to Tenancy.

The landlord stated that the application and Notice of hearing was given in person to the tenant on October 07, 2009 and was witnessed by two other parties. A witness statement has been provided to this effect. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*. The tenants name was inadvertently misspelled on the application and this has been rectified at the outset of the hearing.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to end the tenancy early and gain an Order of Possession on the basis of his application pursuant to section 56 of the *Act*.

### Background and Evidence

This tenancy started on October 01, 2007. The tenant pays rent of \$500.00 for this basement suite. Rent is due on the 10<sup>th</sup> of each month and has been paid in advance. The tenant paid a security deposit of \$250.00 on October 01, 2009.

The landlords' daughter states that the tenant has caused a fire in the suite because he continues to smoke despite having been given warning letters not to smoke inside the suite. The fire occurred and burnt the tenants' sofa and the landlords' carpet. The landlords' daughter states the tenant has used threatening language towards her and they landlords family are frightened of the tenants. The landlords' daughter states that her mother was diagnosed with cancer and any cigarette fumes or odours affect her health. On September 01, 2008 the landlord gave the tenant a warning notice to stop smoking in the building. This notice also states that the tenant must keep the suite clean from hazardous odours, mildews and funguses. The

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landlord and tenant have both signed this notice and the landlords' daughter stated that the tenant said he would comply with this request. However, they found that the tenant continued to smoke inside the suite and the fumes from this enters their home upstairs. The landlords issued another notice concerning the same issues on February 14, 2009. They informed the tenant that if he did not comply they would be forced to issue him with a One Month Notice To End Tenancy.

The landlords' daughter states the tenant has continued to smoke in the suite and it was this action which caused the fire. The landlords' daughter gained permission to enter the suite and took photographs of the conditions in the suite. These photographs indicate that the tenant continues to smoke in the suite and the suite is in an unclean and unsanitary state. The restoration company working on behalf of the landlords insurers have taken up the carpet and found evidence of mould which they state are caused by the tenants living conditions with his cat. They sought approval to put in some machines to remove the toxic odours left by the fire but permission was not given by the tenant. These machines have been placed in the landlords' home to reduce the odours. The landlord also states that the tenant disturbs the neighbours and plays loud music in his vehicle.

The tenant disputes all of the landlords' allegations. The tenant states that at the beginning of the tenancy he was given permission to smoke and states that the landlord or other persons come into his suite to smoke and drink when he is not there. The tenant states he is not threatening to the landlords' family but instead feels threatened by the landlords' daughter who has a vendetta against him. He states he gets on with the landlord and his neighbours and is always polite. The tenant claims a cigarette dropped onto his bathrobe which caught on fire and spread to the sofa and carpet. He claims he had the fire under control when the landlords' daughter called the fire service that arrived to put out the fire. The tenant claims he did comply with the notice as he put on the fans when he smoked inside the suite.

The landlord requests an early end to the tenancy and an Order of Possession to take effect by October 30, 2009.

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## Analysis

Section 56(2) of the *Act* authorizes me to end a tenancy earlier than the tenancy would end if Notice to End Tenancy were given under section 47 of the *Act* and grant an Order of Possession for the rental unit if the tenant or persons permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord's property at significant risk;
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
  - (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

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I find that the landlord has provided sufficient evidence, pursuant to section 56 of the *Act*, to show that the tenant has jeopardized the health and safety of the landlord and his family by continuing to smoke inside the suite after being given notice to stop. By the tenants own admission he has continued to smoke and feels that by putting on the fans this will dissipate any odours. I find the tenant has put the landlords' property at significant risk and has caused and is likely to cause damage to the residential property by the fire and the generally condition of the suite.

Due to the above I am satisfied, that it would be unreasonable and unfair for the landlord to wait for a One Month Notice to End Tenancy under section 47 of the *Act* to take effect and allow the landlords application for an early end to the tenancy.

### Conclusion

The landlords' application for an Order to end the tenancy early is granted. An Order of Possession to take effect at **1.00pm on October 30, 2009** has been issued to the landlord. A copy of this Order must be served on the tenant. The Order of possession is enforceable through 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: October 16, 2009.

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Dispute Resolution Officer