



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

**ET, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an early end of the tenancy, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the tenant at his basement rental unit on November 23, 2009 at approximately 3:00 pm. The landlord stated that female tenant was present at the time of service. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The landlord testified that originally he had an occupant, S.S., who lived in the downstairs rental unit. This occupant eventually became a tenant who paid rent directly to the landlord. This individual then brought in occupants to assist him with the rent.

The landlord testified that approximately three months ago when the respondent moved into the rental unit the landlord spoke with a social assistance worker to confirm that he was moving in and the address of the rental unit. The landlord's spouse testified that the first month's rent was paid to their downstairs tenant, S.S. and that in October the

respondent paid his rent to her directly. A female tenant lives in a separate room in the basement suite and pays her rent directly to the landlord.

The landlord testified that at approximately 1:00 am on October 27, 2009 they observed the respondent in their backyard, under the light, engaged in a sex act with an unknown female. The landlord stated that the respondent had oral sex with this female and then engaged in sexual intercourse in open view of the landlord. The landlord testified that they have children aged 18, 16, 11 and six years of age and that this behavior was outrageous and shocking. The landlord stated his older daughter could have encountered the respondent and that they found this behavior very disturbing.

The landlord provided copies of written statements provided by his previous tenant S.S. and the female tenant. These individuals cite instances alleging that the respondent is selling drugs from the rental unit, that the respondents friends have kicked the doors in attempts to enter the suite, that the respondent yells and screams, that the downstairs female tenant feels unsafe, that the respondent attempts to break into her room and that tenant S.S. moved out on November 1 due to threats made against him by the respondent.

The landlord testified that toward the end of October he issued the respondent a 10 Day Notice for Unpaid Rent. The landlord stated that the next day he witnessed a young person throw a hammer through his window, breaking a double-pane of glass and that he was hit by the hammer. The landlord stated that later in the day he saw this person enter the downstairs suite and that he called the police. The landlord stated that he believes the respondent was responsible for this offence.

The landlord's spouse testified that she is too frightened to even investigate problems or disturbances caused by the tenant and that she will no longer go out in their shared backyard.

The landlord testified that he has a dispute resolution hearing scheduled for December 7, 2009 in relation to unpaid rent. The landlord testified that he was unaware that he could apply requesting an early end of tenancy until recently and that once he understood he could request an early end to the tenancy he immediately made application.

During the hearing a Telus operator assisted in attempts to reach the previous tenant S.S. to testify. The operator reported that the telephone went directly to voice mail and that four unsuccessful attempts were made to reach the witness.

### Analysis

In relation to the nature of this tenancy I have determined that initially the respondent was an occupant who had been allowed to move into the rental unit by tenant S. S. In

October the respondent paid rent directly to the landlord; thus creating a tenancy with the landlord.

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and the evidence, I find that, on the balance of probabilities, the landlord has met that burden.

In relation to sufficient cause, I find that the disturbances created by the tenant have had significantly distressed the landlord and other tenants. The situation that occurred on October 27 where the tenant chose to have sex in the landlord's backyard, in full view of the family who live upstairs, has caused the landlord and his spouse to feel insecure in their own dwelling. I find that the tenant has placed the landlord in a situation where they are fearful and uncertain what to expect from the tenant.

Secondly, in the circumstances it would be unreasonable and unfair to require the landlord to wait for a notice to end the tenancy under s. 47 and therefore I find that the landlord is entitled to an order for possession. A formal order has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

As the landlord's Application has merit I find that the landlord is entitled to the sum of \$50 being the cost of the filing fee paid pursuant to section 59.

### Conclusion

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 1, 2009.

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Dispute Resolution Officer