



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on November 14, 2016 to end the tenancy early and obtain an Order of Possession. The Landlords also applied to recover the filing fee they paid to make the Application from the Tenant.

The Landlords, the Tenant, and the Tenant’s agent, who was also the father of the Tenant, appeared for the hearing. However, only the Landlords and the Tenant’s agent provided affirmed testimony during the hearing.

The Tenant’s agent confirmed receipt of the Landlords’ Application and the Landlords’ documentary and digital evidence provided prior to the hearing. The Landlords denied receipt of the Tenant’s documentary and digital evidence.

The Tenant’s agent explained that he had registered mailed the Tenant’s evidence to the Landlord and provided the Canada Post Tracking number into evidence. The Landlords testified that they had checked their mail 14 days prior to this hearing and there was nothing sent to them at that point. The Landlords were informed that the respondent Tenant had seven days prior to this hearing to serve them with evidence pursuant to the Residential Tenancy Branch Rules of Procedure. Therefore, I allowed the Tenant to rely on his documentary and digital evidence for this hearing as it had been served pursuant to the Act and the Rules of Procedure.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided. I have considered all the evidence provided by the parties in this case but I have only documented that evidence which I relied upon to making findings on the issue to be decision in this Decision.

It should be noted that at the start of the hearing the Tenant's agent stated that the Tenant had made an Application against the Landlords for the illegal ending of the tenancy and monetary compensation. The parties' confirmed that those matters are scheduled to be heard on December 22, 2016 under a different file number which is documented on the front page of this Decision. As a result, I informed the parties that this hearing would only deal with the Landlords' request for an Order of Possession to end the tenancy early and the Tenant's Application would be heard at the December 22, 2016 hearing. I informed the parties that while they may have evidence to provide on the issues to be decided at the December 22, 2016 hearing, I would not be making any legal findings on those matters.

#### Issue(s) to be Decided

Are the Landlords entitled to end the tenancy early and obtain an Order of Possession?

#### Background and Evidence

The parties agreed that this tenancy for an apartment in a strata building started on April 1, 2016. A written tenancy agreement was completed which provides for a fixed term of one year due to expire on March 31, 2017; after this time the tenancy is set to continue on a month to month basis. Rent is payable by the Tenant in the amount of \$2,100.00 on the first day of each month. The Tenant paid the Landlords a security deposit of \$1,050.00 which the Landlords still retain.

The female Landlord testified that on November 4, 2016, she received a phone call from the strata management that the police had executed a search warrant at the rental unit to investigate a marijuana grow operation the Tenant was alleged to have had there. The female Landlord explained that during that search, the police arrested the Tenant who was present at the rental unit and a city official accompanying the police during the search posted a 'Not Safe To Occupy' order on the rental unit door.

The female Landlord explained that when the police had executed the search warrant they had taken a city official with them to check on any power breaches the Tenant may have committed. The female Landlord testified that because the rental unit had mold in it due to the illegal marijuana grow operation the Tenant was operating, and the Tenant had been messing with the power supply to the rental unit, the city inspector ordered that the power be shut off and that the unit should not be occupied because of the safety issue associated with the mold. The Landlord provided a photograph showing the 'Not Safe To Occupy' order posted on the rental unit door.

The female Landlord testified that following the search of the rental unit, she made efforts to contact the Tenant, the police, the strata, and the city about what had gone on at the rental unit. The Landlords provided e-mail communication as evidence to show their efforts to obtain information regarding the search.

The female Landlord testified that when she contacted police, they informed her that they suspected that the Tenant was conducting an illegal marijuana grow operation inside the rental unit and that there had also been several reports of break and enters into the rental unit. The female Landlord testified that she was informed by the strata management that due to the safety issue the rental unit imposed and the potential threats to other residents of the rental unit, the strata changed the locks to the rental unit door and deactivated the Tenant's main entrance key fob.

The female Landlord testified that she went to the rental unit on November 8, 2016 and was let in by the strata management where she observed the deplorable state of the rental unit the Tenant was residing in. The Landlords took an extensive amount of photographs to document the state of the rental unit which they provided into evidence and referred to during the hearing.

The Landlords pointed me to photographs to show evidence of marijuana paraphernalia, such as 'bongs' and water bottles taped with pipes going into several buckets. The male Landlord referred me to a photograph that showed that the Tenant had set up multiple wiring throughout the rental unit that was connected to several fans also placed throughout the rental unit. The male Landlord directed me to a photograph which showed that the Tenant had taped into the washer/dryer electrical connections to then generate multiple electrical outlets/sockets which in turn fed power to other areas of the rental unit.

The Landlord referred me to photographs showing multiple lights and wiring which had been taped to the walls which had caused extensive damage throughout the rental unit. The female Landlord pointed to several photographs showing hydroponic lights and fans on a dog kennel that had been modified for the grow operation. The Landlord testified that there was mold in the rental unit which was the result of the Tenant growing marijuana and showed a photograph to show the presence of mold on the ceiling by the window. The female Landlord submitted that the mold had endangered the rental unit and prevented the occupancy of it.

The Landlords submitted that they had not given any permission for the Tenant to have or grow marijuana at the rental unit. The female Landlord testified that the police investigation into the grow operation is ongoing. The Landlords submitted that they fear

that the Tenant will continue to cause further damage to the rental unit and that this activity has and will continue to endanger their lawful right as the Landlord owners of the strata unit. The Landlords also pointed me to photographs which show the state of the rental unit at the start of the tenancy which was in good condition.

The Tenant's agent stated that the police had executed a search warrant of the rental unit on November 4, 2016 but that the investigation has not yielded any charges or evidence against the Tenant since he was not arrested but only detained and interrogated and then released. The Tenants' agent submitted that the Landlords' photographic evidence showing the rental unit in a deplorable state was caused by the mess left behind by the police during the search and that this was not reflective of how the Tenant lived.

When the Tenant's agent was asked about the marijuana paraphernalia, the Tenant's agent explained that the Tenant had a licence to grow marijuana and that this was not an illegal activity which is why no charges have been laid by the police and the investigation has been closed. When the Tenant's agent was asked about the Tenant's alleged licence to grow marijuana, the Tenant's agent referred to me an application the Tenant had completed to grow marijuana and a picture of a dispensary card which states:

*"The bearer of this card is entitled to purchase medical cannabis at [company name] and [company name] locations. The holder of this card is NOT to resell or share any products purchased".*

[Reproduced as written]

The Tenant's agent denied that the Tenant is operating an illegal grow operation at the rental unit and that he has caused damage to it. The Tenant's agent stated that there is no mold in the rental unit and they have not been given an opportunity to go into the rental unit to assess the mold with a professional person to verify that it is mold. The Tenant's agent insisted that there the city has not restricted occupancy to the rental unit and that the Landlords are using this as a way to deny the Tenant's access to it.

The female Landlord testified that she had provided a copy of the search warrant into evidence which shows that the Tenant has no licence to grow marijuana. The female Landlord also referred to email communication with a city official who confirms the no occupancy order and that it is standard procedure to post an 'unsafe to occupy' order where they attend with police for a search warrant.

Analysis

An early end of tenancy is an expedited and unique remedy under the Act and is only available to a landlord when the circumstances of the tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

In such an Application, the landlord bears the burden of proof which must be satisfied on the balance of probabilities. As a result, I have analysed the evidence of both parties and make my findings based on the balance of probabilities as follows. Section 56(2) of the Act provides the circumstances in which a Landlord may apply to end the tenancy early.

*The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,*

*(a) the tenant or a person 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*

[Reproduced as written]

Based on the evidence before me I find that this tenancy should end early. I make this determination based on the following findings. I find the Landlord's comparative

photographic evidence to be the most convincing and compelling evidence that supports the Landlords' oral testimony that this tenancy should end early.

I accept the Tenant's agent's submissions that a lot of the mess shown in the photographs may have been caused by the police during the search as plausible. However, I do not base my findings on a determination that the condition of the rental was a mess. Rather, I find the Landlords' extensive photographs shows sufficient evidence that satisfies me the Tenant was engaged in marijuana drug making activity at the rental unit. The photographs depict marijuana drug paraphernalia such as bongs, lamps, fans, and wiring which I find are consistent with a grow operation.

I find the Tenant's agent's testimony that the Tenant had a licence to manufacture marijuana is in part contradicted by the Tenant's own evidence and therefore, is not credible. This is because the Tenant's agent relies on a completed application to manufacture marijuana at the rental unit. In this respect, there is no evidence that the application was submitted or approved or that the Landlords had been consulted about the application to grow marijuana at the rental unit. I find the Tenant's evidence of a card does not even mention anything about the Tenant being able to grow marijuana and I am confused as to why the Tenant relies on this as evidence that he was free to grow marijuana plants at the rental unit. Therefore, I find that this claim is unproven.

I make no findings on the 'Not Safe to Occupy' order issued by the city which was provided into evidence, but I do find that the Landlords' photographic evidence does show evidence of mold activity in the ceilings of the rental unit; again, I find this to be consistent with a marijuana drug operation. I find that in doing so the Tenant has seriously jeopardised the health and safety of other occupants in the building and that the Tenant has put the Landlord's property at significant risk and jeopardised their lawful right as owners of the strata rental unit.

Accordingly, I find that this tenancy must end early and the Landlords are granted a two day Order of Possession, copies of which are attached to the Landlords' copy of this Decision. This order must be served to the Tenant and may then be enforced in the BC Supreme Court as an order of that court. As the Landlords have been successful in their Application, I find they are entitled to recover the cost of their filing fee pursuant to Section 72(1) of the Act. As a result, the Landlords may deduct \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

### Conclusion

For the reasons set out above, I grant the Landlords an Order of Possession effective two days after service on the Tenant. The Landlords may recover their filing fee from

the Tenant's security deposit. 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: December 15, 2016

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Residential Tenancy Branch