



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent RW (the "landlord"). The tenant was assisted by their social worker.

As both parties were present service was confirmed. The tenant confirmed they had been served with the landlord's application of July 12, 2019 and evidentiary materials. The tenant disputed that the landlord sufficiently informed them of the nature of the documents when serving but I find that there is no obligation for an applicant to explain the dispute resolution procedure to a respondent. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties said that the respondent JL is not a tenant but a family member of the tenant. The parties confirmed that JL has no landlord-tenant relationship with the applicant. As such, respondent JL was removed as a party from this proceeding.

### Preliminary Issue- Adjournment Request

At the outset the tenant requested the hearing be adjourned to another time. The tenant explained that they are currently undergoing treatment for mental health issues and have difficulty participating in the hearing.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that there is little prejudice to the tenant to proceed with a hearing. The tenant attended the hearing, accompanied by their social worker. The tenant was able to cogently respond to direct questions, appeared to understand the nature of the proceedings and the landlord's claims. Under the circumstances, I find that the tenant has not met the criteria established for granting an adjournment and proceeded with the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This periodic tenancy began in September 2018. The monthly rent is \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a detached dwelling with other occupants residing in the suites below the tenant.

The landlord gave evidence that the tenant has caused significant damage to the rental unit and the unit below. The landlord said that the tenant has caused flooding on at least six different occasions, has torn cabinet and oven doors off of their hinges, and has disposed of garbage by throwing it outside of the rental unit into the common area

below. The landlord submitted into evidence photographs of the condition of the suite and witness statements from neighbors attesting to the destruction caused by the tenant. The landlord's witness also gave written statements regarding several hostile interactions with the tenant and their concern for their safety and welfare.

The parties gave evidence that the tenant was arrested on July 9, 2019 and since that time has been receiving treatment for mental health issues. The tenant's social worker testified that they do not have a confirmed date when the tenant will be discharged but believe it could be as early as July 29, 2019, one week after the hearing.

The landlord gave evidence that while the tenant has been receiving treatment they have continued to contact the other occupants of the building by phone and have caused distress to them.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;

- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

I find that the landlord has provided sufficient evidence to show that the tenant has put the landlord's property at significant risk and has unreasonably disturbed the other occupants of the rental building. Tearing open doors, flooding a rental unit and the unit below and hurling garbage out of the suite onto the ground below are all acts that inherently cause damage to the property.

I accept the evidence that this behaviour is not restricted to a single incident but part of a continuing pattern of behaviour during this tenancy. While I understand that the tenant is undergoing treatment, I find that there is insufficient evidence to conclude that the treatment will have a measurable effect on the tenant's behaviour. Based on the evidence I find that there remains the real possibility that the tenant may cause further damage to the landlord's property or interference with the other occupants. I find under the circumstance that it would be unreasonable to the other occupants of the rental unit and the landlord to wait for a notice to end tenancy to take effect or to

Accordingly, I issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord was successful in their application the landlord may recover the \$100.00 filing fee. The landlord may satisfy this monetary award by deducting \$100.00 from the \$650.00 security deposit for this tenancy.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$650.00 to \$550.00.

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: July 23, 2019

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Residential Tenancy Branch