



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order to end the tenancy early pursuant to Section 56 of the *Act*, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and the Tenant were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlords’ evidence with the exception of two video clips. The Landlords confirmed that they did not serve the Tenant with a copy of these video clips and therefore these two pieces of evidence are not accepted and will not be considered in this decision. The Landlords confirmed receipt of the Tenant’s evidence and did not bring up any concerns regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Are the Landlords entitled to an Order of Possession to end the tenancy early pursuant to Section 56 of the *Act*?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy was already in place when the Landlords purchased the property in May 2014 and had started a few years before that. Currently rent in the amount of \$800.00 is due on the first day of each month. No security deposit or pet damage deposit was paid.

The Landlords testified that they were aware that the Tenant had a portable washing machine that he used by plugging it into the sink. They stated that they had a conversation with the Tenant that he would be responsible for any damages caused by the use of this washing machine. The Tenant denied that this had been discussed.

The Landlords stated that on July 6, 2019 the Tenant informed them that the sink in the rental unit had overflowed while using the washing machine. The Landlords stated that they entered the rental unit and did not notice anything. They stated that the Tenant advised them that he had cleaned up the spills on the floor.

On July 7, 2019 the Landlord attended the rental unit again after purchasing a drain snake and stated that it was then they noticed water dripping out of the cabinets and water in the cutlery drawer. They submitted photos of the rental unit including the cabinets and cutlery drawer. They also noted that the garbage can below the sink was filled with water and that the baseboards were swollen with moisture.

The Landlords stated that they called the insurance company who attended the rental unit and put up blue tape showing where water was present. They submitted a report from a restoration company which shows the areas marked off by the blue tape.

The Landlords stated that along with the inspector from the insurance company they also had a plumber and a drywall inspector attend. They submitted that the professionals deemed the unit uninhabitable due to the water damage which they noted could be contaminated by sewage due to the issue resulting from the drainage system.

The Landlords testified that they have been advised that the work will take 6-8 weeks to complete and needs to start right away to minimize further damage. They also stated that asbestos was found in the walls which will required further repairs and abatement.

The Landlords stated that they advised the Tenant that work needed to start in the rental unit right away and that the unit needed to be vacant to do so. They stated that

they served the Tenant with documents regarding a frustrated tenancy but that the Tenant would not sign.

The Landlords stated that they have spoken to the Tenant multiple times about the repairs needed and that the Tenant must move his belongings to assist with the completion of the repairs. They stated that on or around July 11, 2019 they were in the rental unit and noticed water still present in pots and pans in the Tenant's cupboard.

The Landlords also stated that on July 19, 2019 an inspector attended the rental unit again and noted that while the unit is slightly drying out, the water is still soaking through the floors and into the walls. An air filter was placed in the rental unit to try to help the air quality. A plumber also attended the rental unit and noted that the washing machine was the likely cause. The Landlords stated that the Tenant would not provide permission for the plumber to run the washing machine to check for issues.

The Landlords stated that the repairs will involve moving everything out of the rental unit, cutting through the drywall, removing the insulation, cutting off the water and likely the electricity as well. They stated that although unsure as to the exact cause of the initial issue with water overflowing, it seems to have originated through use of the washing machine and that there was further damage caused by the Tenant not cleaning up the water and instead leaving water standing in various areas of the rental unit.

The Landlords submitted into evidence an email from the insurance company which states in part the following:

*We will not consider any additional damage that may occur to the Insured's property because the tenant will not allow contractors etc. in to do work.*

The email further notes that the 'Insured is contractually obligated' to mitigate damages by allowing access and that any disagreement between the landlord and tenant is between the parties and not the insurance company.

In the report from the restoration company dated July 7, 2019 which was submitted into evidence by the Landlords, the report notes the source of the issue as a 'kitchen sink drain back up from washer'. The report also note damage to the kitchen and bathroom and state the following as the materials damaged: drywall, based, case, cabinets, lino and subfloor. The report further notes that asbestos testing is required, and that mould may be present.

The Tenant testified that the sink overflowed on July 6, 2019 and that he informed the Landlord that same day. He stated that he moved his belongings out of the kitchen area and cleaned up the water that had pooled on the kitchen floor. He stated that he was not aware at the time that there was water in the cabinets or drawers and had not noticed the water in the garbage can or pots and pans.

The Tenant further testified that he does not see any further damage in the rental unit other than some tiles ripped up. He also noted that the Landlord had previously washed paint down the sink which may have led to issues, which the Landlords denied. The Tenant also stated that the Landlords told him he would have to pay for the plumber and the insurance deductible but stated that he had not seen any of the reports or documents regarding the issue until receiving them for this hearing.

The Tenant stated his position that water enters the rental unit through flooding that occurs outside by the entrance and submitted photos of the area where he stated water pools. The Landlords denied this claim and stated that the Tenant has never notified this that this was an issue.

The Tenant submitted photos into evidence as well as an audio recording of a conversation between himself and the Landlords.

The Landlords stated that they need the Tenant to cooperate with the recommendations of the professionals so that repair work can start. They noted that they are concerned about further damage to the rental unit and their home, as well as a risk to their health. They stated that regardless of whether this was an accident or not, the repairs need to be completed right away.

The Tenant stated that he is willing to move out but needs more time to do so. The parties were unable to reach a settlement agreement.

### Analysis

The Landlord has applied for an order to end the tenancy early pursuant to Section 56 of the *Act*.

I accept the evidence before me as well as the testimony of both parties who agree that there was an issue with the sink overflowing that occurred on or around July 6, 2019. Regardless of the exact cause of the overflow, I find that the current issue is completing

the repairs to the rental unit to ensure the safety and well being of the occupants of the property as well as the property itself.

I find the email from the insurance company to be compelling evidence that the Tenant is not allowing access to the rental unit and thus is interfering with the completion of repairs. I also find that by not cooperating with the need for repairs, that the Tenant is jeopardizing the Landlords' insurance which may not cover further issues that arise due to repairs not starting right away.

I find that the report from the restoration company establishes that there is concern for mould and asbestos and that there is water damage in the drywall and floor, along with other areas of the rental unit, which lead to an urgent need for repairs to be started. The Tenant did not dispute that he is interfering with the completion of repairs and instead, stated that he does not see any ongoing issues from the water/drainage issue.

The Landlords testified that the rental unit must be empty to start repairs and that the professionals will not start the repairs until this time, which the Tenant did not dispute. I also accept the testimony and evidence before me that there remained significant water pools in the rental unit following the initial incident, such as in cabinets and drawers. I accept the testimony of the Landlords that repairs are necessary and urgent, and I find that the Tenant's actions have caused risk to further damage to the rental unit, in particular risk of mould and more significant repair issues. Further to this, I find that the Tenant is putting the property at significant risk by not allowing access to the rental unit, as stated in the email from the insurance company, such that insurance may not cover any additional damage.

Section 56(2)(a)(iii) states that a tenancy may be ended early if the tenant or person permitted on the property by the tenants has put the landlord's property at significant risk. By delaying the repairs to the rental unit and not taking steps to address the issue beyond cleaning the water from the floor, I find that the Tenant has put the Landlords' property at significant risk.

I also note that Section 56(2)(b) states that a landlord must also establish that it would be unreasonable or unfair to wait for a One Month Notice to take effect. In this matter, I find that the Landlords have established that they cannot wait to begin repairs due to the risk to the property and therefore find that it would be unreasonable for them to wait for a One Month Notice to take effect to end the tenancy.

Therefore, I find that the Landlords have met the burden of proof for me to be satisfied that this tenancy should end early, pursuant to Section 56 of the *Act*.

Accordingly, I award the Landlords a 2-day Order of Possession. As the Landlords were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00 and grant a Monetary Order for this amount.

### Conclusion

I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: July 29, 2019

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Residential Tenancy Branch