



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an order of possession, as he asserts that the Tenant poses an immediate and severe risk to the rental property, other occupants or the Landlord. The Landlord also applied to recover the cost of his \$100.00 Application filing fee.

The Tenant, the Landlord, the Landlord's wife, A.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenant, the Landlord, and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant did not submit any documentary evidence for the proceeding.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the early termination of the tenancy in accordance with section 56 of the Act?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Landlord submitted a tenancy agreement signed by the Parties. The Parties confirmed the following details of the tenancy. The fixed term tenancy began on October 3, 2019, and was to run to April 30, 2020, with a monthly rent of \$800.00, due on the first day of each month. The Landlord confirmed that the Tenant paid him a security deposit of \$400.00, and no pet damage deposit. The Parties agreed that the rental unit is an independent suite in the residential property, and that the Landlord and Agent also run a B & B out of the residential property.

In the hearing, the Agent said the reason the Landlord seeks an early termination of the tenancy and an Order of Possession is because the Tenant engages in illegal activity. The Agent indicated that this has adversely affected the quiet enjoyment, security, safety, or physical well-being of the Landlord and other occupants of the residential property. The Landlord said in his Application that the reason he requests an early termination of the tenancy is that the Tenant deals drugs out of the rental unit. He said this is evidenced by strangers to the residential property arriving multiple times at night, arriving carrying things, and leaving carrying things.

In the hearing, the Agent said that their family lives in the same building as the rental unit, which is directly below the Landlord's residence. The Agent said the Tenant's guests and behaviour are a threat to their B & B business, which is their sole livelihood.

The Landlord said that on one occasion they called the police, because an unregistered vehicle was parked outside. The Agent said they also gave the police a bag of crystal meth that they had found outside of the rental unit that day.

The Tenant said: "I had a few nights where I messed up and people were coming and going at night. I'm not a drug dealer. I had my kid apprehended by his Dad; I messed up. I just had a couple friends over and I thought that was allowed." The Tenant further explained what she meant by "messed up", saying: "I partied in the holidays and had an emotional breakdown. There was a lot of life trauma and stress. I lost my brother three

years ago; it's hard at Christmas time, and I guess it got the best of me, and I am moving forward."

I asked the Landlord what he means by his comment that there is "all night drug activity" surrounding the rental unit, and how they know what is going on. The Agent said:

It's because of the people that have been coming in. We've just seen a lot of people coming and going; they're always carrying stuff in and carrying stuff out. It's always at night, not during the day.

The Tenant leaves and she's not even living here. I don't understand why she wants to have this place, if she's not living here. She is using it for some purpose, but it has taken on a completely different use. The police themselves said that one of the people who was here is known to them, and that [the Tenant] is known to the police.

The Tenant has a parking space allocated to her, but there are a lot of vehicles parking here - unregistered vehicles, too.

There's not been an arrest or a charge yet, but you'd have to talk to the police about the Tenant and the other person who was here, and how they are known to the police.

The Tenant said the following in response:

The purpose of having my home was to have a home with [D.], my son. But since late December to the beginning of January, I haven't been home, because my son's not there. I don't like being there. I spend my days busy with my family. I have my Mom, my sister, and my aunt in different towns. They can't drive to me. We travel around to see everybody during the day and come home for bedtime.

I didn't know I wasn't allowed to have people over. I don't think that just because we are known by the police should prove anything. I don't feel comfortable there with you watching out the window when I come in. I don't feel like being there, unless I'm sleeping. But I don't have anywhere else to put my stuff or any storage. There's not very much out there, so yes, I do want to move, but I don't have a place to go. I'm never there.

The Landlord said:

In our lease agreement, I've written down the number of things that have been broken. That's besides the suspicion of drug use. There has been no written permission for another person to stay there. The Tenant is talking about feeling violated. We are feeling violated, because we have people in our home that we are not comfortable with. The Tenant says she doesn't have a place to stay, but she's not here. There was a dog in the suite, our place is rented as a B & B with a no pets policy, so people with allergies can stay. That has been broken. There is one parking space that has been allowed, but sometimes there were two or more vehicles parked there.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, in this case, the Landlord.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. has 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. 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 tenancy under section 47 to take effect.

I find that the Landlord's evidence consists of suspicion and circumstantial evidence, leading them to conclude that the Tenant is using the rental unit as a "drug house". However, their own evidence – the undisputed evidence before me - is that the Tenant does not stay at the rental unit much of the time. Further, the Landlord may have concerns about the Tenant's behaviour, but much of the hearing was taken up with evidence that the Tenant's mother is staying in the rental unit longer than the Landlord would like. Further, the Landlord expressed concerns about how the Tenant's guests use the parking available to the residential property, and the presence of a dog in the rental unit. These are not grounds for ending a tenancy early under section 56.

The Landlords are concerned about the Tenant and one of her guests being "known to police"; however, I find that this is not proof of the Tenant having partaken in "drug activity" at the rental unit. The Landlord expressed discomfort with the type of people coming and going to the rental unit. The Agent said these people are a threat to the Landlord, the building, the B & B guests, and the neighbours. The Landlord acknowledged that no one had been charged with any crimes or arrested, based on activity at the rental unit; therefore, I find it inconsistent with administrative fairness to end the tenancy, based on the Landlord's suspicions that what is going on amounts to "drug activity".

Based on all the evidence before me, overall, I find that the Landlord has not provided sufficient evidence to meet the burden of proof in establishing the grounds set out in section 56 of the Act. Accordingly, I dismiss the Landlord's Application for an early termination of the tenancy.

However, during the hearing, the Tenant expressed her discomfort with living in the rental unit and her desire to move out, although, she felt unable to do this by the end of January 2020. I discussed the possibility of the Parties mutually agreeing to end the tenancy by the end of February 2020, in case I should decide against the Landlord's Application. The Landlord was more comfortable with an earlier end of the tenancy; however, he indicated that if he was unsuccessful with his Application that he would agree to ending the tenancy on February 29, 2020. The Tenant said she would have preferred to move in mid-March, but she agreed to be bound by moving at the end of February 2020.

Accordingly, with the agreement of both Parties and in accordance with section 63 of the Act, I grant the Landlord an Order of Possession dated February 1, 2020, at 1:00 p.m. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Given that the Landlord was unsuccessful in his Application, I decline to award him recovery of the Application filing fee.

### Conclusion

The Landlord is unsuccessful in his Application for an early termination of the tenancy. I found that the Landlord provided insufficient evidence to satisfy the burden of proof in this matter. As such, the Landlord is not awarded recovery of the Application filing fee.

However, at the end of the hearing, the Parties agreed to end the tenancy as of February 29, 2020. Accordingly, I find it appropriate to grant the Landlord an Order of Possession, which must be served on the Tenant and which is effective on February 29, 2020, at 1:00 p.m.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 29, 2020

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Residential Tenancy Branch