



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **ET, FFL**

### Introduction

This emergency hearing dealt with an emergency application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord testified the landlord personally served the Notice of Hearing and Application for Dispute Resolution on the tenant on March 17, 2020 and posted the documents to the unit on the same day. The landlord did not submit the RTB-9 form, Proof of Service form.

The landlord testified that that he located the tenant in the municipality where the unit is located. The landlord stated that the tenant appeared to be homeless and told him,

“Don’t bother me. I’m not going back there [to the unit].” I have carefully considered the testimony of the landlord who I found credible and reliable. Considering the uncontradicted evidence of the landlord, I find the landlord has sufficiently served the Notice of Hearing and evidence upon the tenant on March 17, 2020 pursuant to section 71(2)(b) of the Act.

The landlord withdrew his request for reimbursement of the filing fee and stated that the claim was solely for an Order of Possession.

#### Issue(s) to be Decided

Is the landlord entitled to the following?

- An order for early termination of a tenancy pursuant to section 56;

#### Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The tenancy began “7 or 8” years ago. Rent is \$830.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$375.00 which the landlord holds. The landlord did not submit a copy of the tenancy agreement as evidence.

The unit is a small house with unfinished basement. The landlord testified that on February 28, 2020, he attended at the unit to fix exterior stairs. He looked through the basement window and saw that the interior water pipe was broken, and water was flowing into the basement. A large dog was locked in the basement to which only the tenant had a key. The landlord observed that there was no electricity provided to the building; the tenant had not provided this information to the landlord. The tenant appeared to have vacated the unit and left the dog in the basement with no exit.

The landlord immediately posted a Notice to enter the premises for inspection; he attempted to call the tenant who would not answer his calls or return his messages. The landlord called animal protection officers. He was informed by BC Hydro that electricity had been cut off to the unit but was unable to determine how long ago.

On March 3, 2020, the tenant met the landlord at the unit, put the dog upstairs, and let the landlord into the unit. The landlord turned off the water to the unit which was still running into the basement.

The landlord submitted pictures in support of his observations of the condition of the basement, as follows:

- Without heat, the water pipes had broken, and water was entering the basement;
- Water pipes were chewed by rats in “hundreds” of places;
- The rats appeared to have chewed the ceiling insulation which fell to the floor and absorbed water;
- The floor was strewn with garbage bags, clothing, the insulation, and miscellaneous items which completely covered the surface of the floor;
- Underneath the items covering the basement floor, was several inches of water which had seeped about two feet up the concrete walls;
- The floor had heaps of dog feces;

The landlord then inspected the main floor of the unit and submitted pictures in support of his observations of the condition, as follows:

- The main floor was in a similar condition to the basement; that is, it was strewn with garbage and miscellaneous items including vehicle tires, broken furniture, rotting food, and so on;
- There were several mattresses in the unit which were pulled apart, urine-soaked, and had mounds of feces from rats or the dog;
- The smell was “overpowering” and the situation was extremely filthy.

The landlord testified that the basement smelled so foul that the landlord said he would not enter again without respiratory equipment. The landlord is concerned with the health implications of rotting food, garbage and feces.

The landlord testified that he immediately posted a One Month Notice to End Tenancy for Cause on March 3, 2020. While the landlord did not submit a copy of the Notice, he testified that the cause related to the extraordinary damage caused by the tenant.

The tenant brought this application on March 17, 2020 and served the tenant with the Notice of Hearing and evidence package on that date. The Notice stated, “This is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord”.

The landlord testified that he believed that the tenant vacated the unit prior to February 28, 2020 and left his dog tied in the basement. The landlord testified he has seen the dog recently tied outside the unit.

The landlord testified that health concerns and water damage is exacerbated every day the unit remains in its current situation.

The landlord requested an Order of Possession and claimed the tenant posed an immediate and severe risk to the property.

### Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

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 onus is on the landlord to establish on a balance of probabilities that he is entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice").

Section 56 of the Act provides as follows [emphasis added]:

### ***Application for order ending tenancy early***

**56** (1) *A landlord may make an application for dispute resolution to request an order*

- a. *ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*
- b. *granting the landlord an order of possession in respect of the rental unit.*

(2) 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 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

(b) it would be unreasonable, or unfair to the landlord 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord relied on section 56(2)(a)(ii) and (v), that is, that ***seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant*** and/or, ***the tenant has caused extraordinary damage to the unit.***

*Policy Guideline 51 – Expedited Hearing* provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

*Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.*

*The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

Based on a review of the testimony and evidence, and taking into account the *Act* and the *Guideline*, I find that the landlord has met the burden of proof on a balance of probabilities under section 56(2)(a)(ii) and (v), that is, the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; as well, the tenant has caused extraordinary damage to the unit.

I also find the landlord has met the burden of proof on a balance of probabilities that it would be unreasonable, or unfair to the landlord to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect. I find the damage of the water on the floor of the basement to be causing ongoing damage and the presence of feces from rats or the dog to be a significant health and safety concern.

In reaching this conclusion, I have given significant weight to the testimony and photographs submitted by the landlord. The landlord impressed me as candid, forthright, and credible; his testimony was supported by photographs which illustrated ongoing water damage and disturbing evidence of filth and damage by rodents and a dog leading to a reasonable conclusion that health and safety of the landlord are jeopardized.

I accept the landlord's evidence that food is rotting in the unit and feces are present necessitating respiratory protection to enter and clean the unit.

I find the landlord has established entitlement to an order for early termination of tenancy and an Order of Possession effective immediately.

Accordingly, I grant an Order of Possession ending the tenancy effective two days after service on the tenant.

Conclusion

I grant the landlord an Order of Possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: April 03, 2020

---

Residential Tenancy Branch