



# 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 an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. No one appeared on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent acting on their behalf attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing and the documentary evidence before me was sent to the Tenant at the rental unit by registered mail on May 14, 2020. The Agent provided me with the registered mail tracking number, receipt, and a copy of the postage tag and the Canada Post website confirms that the registered mail was sent as described above and delivered May 15, 2020. As a result, I find that the Tenant was served in accordance with the *Act* and the Rules of Procedure on May 15, 2020. However, due to the current state of emergency, my understanding is that registered mail is not always personally delivered and can be left in a mailbox. The Agent confirmed in the hearing that there are individual mailboxes for each unit at the residential property. In the event that the Tenant did not personally receive the registered mail on May 15, 2020, as stated in the tracking information provided by Canada Post, I nevertheless find that they were deemed served on May 19, 2020, in accordance with section 90 (a) of the *Act*.

Having found that the Tenant was served or deemed served with the Notice of Dispute Resolution Proceeding Package on either May 15, 2020, or May 19, 2020, well in advance of the hearing, including a copy of the Application, the Notice of Hearing and the documentary evidence before me, I proceeded with the hearing as scheduled despite the absence of the Tenant or anyone acting on their behalf pursuant to rules 7.1 and 7.3 of the Rules of Procedure.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

#### Preliminary Matters

At the outset of the hearing I identified that there was a person present who was not a party to the dispute, or a witness, agent, or support person for either party. It was determined that this person was not in the correct hearing and the person was provided with the correct date and time for their own hearing and left the conference call.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me from the Landlord shows that the one-year fixed term tenancy began on April 1, 2019, and became month to month after the end of the fixed term on March 31, 2020. The tenancy agreement states that rent in the amount of \$1,400.00 is due on the first day of each month and that security and pet damage deposits were paid in the amount of \$700.00 each. The Agent did not dispute any of these terms.

The Agent stated that there have been ongoing issues with noise in the Tenant's rental unit since the start of the year and that they have received complaints approximately

every other day from the occupants above, below, and beside, the rental unit, who are also tenants of the Landlord. The Agent stated that yelling, screaming, stomping, and banging can be heard at all times of the day and night and that one resident has already vacated their rental unit as a result, and another gave notice to vacate on May 29, 2020. The Agent stated that the Tenant has been given verbal and written warnings in February and March of 2020, and the behavior has continued without improvement. In support of this testimony the Agent pointed to letters and a text message authored by other occupants of the residential property in relation to noise from the Tenant's rental unit, the notice to vacate from another occupant dated May 29, 2020, several warning letters and emails sent to the Tenant regarding noise complaints and a section of the addendum to the tenancy agreement relating to conduct of tenants and their occupants.

The Agent stated that the Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property as a result of noise, and that it would be unreasonable under the circumstances to wait for a One Month Notice to End Tenancy for Cause (a "One Month Notice") to take effect as the disturbance to the other occupants of the residential property is so significant that one occupant has already moved and another gave notice on May 29, 2020. Further to this, the Agent stated that the Tenant has been given numerous warnings and opportunities to change the behaviour and has not done so.

The Agent stated that although the Tenant has not paid rent for April, May or June of 2020, they are requesting an Order of Possession for June 15, 2020, as they understand that the Tenant will need time to pack and clean the rental unit before vacating.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration.

### Analysis

Section 56 of the *Act* states that a landlord may end a tenancy earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*] of the *Act* if he tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or

the landlord of the residential property and 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 to take effect.

I am satisfied based on the affirmed and uncontested testimony of the Agent in the hearing and the significant documentary evidence before me from the Landlord that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed other occupants of the residential property. Given that one occupant has already vacated their rental unit and another occupant has given notice to vacate on May 29, 2020, as a result of the noise in the Tenant's rental unit, I also find that it would be unreasonable and unfair to the Landlord and the occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

As a result of the above, and pursuant to section 56 of the *Act*, I find that the Landlord is therefore entitled to an Order of Possession for the rental unit effective June 15, 2020, after service of the Order of Possession on the Tenant.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to recovery of the \$100.00 filing fee and I grant the Landlord a Monetary Order in the amount of \$100.00 pursuant to section 67 of the *Act*. The Landlord is entitled to recover this amount by way of the attached Monetary Order or by withholding this amount from any security deposit or pet damage deposit paid by the Tenant and held by the Landlord.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on June 15, 2020, after service of this Order** on the Tenant. The Landlord is 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$100.00**. The Landlord is 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: June 4, 2020

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Residential Tenancy Branch