



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ET, FFL

### Introduction

In this dispute, the landlord seeks to end a tenancy under section 56 of the *Residential Tenancy Act* (the “Act”), and, seek recovery of the filing fee under section 72 of the Act.

The landlord applied for dispute resolution on May 20, 2020 and a dispute resolution hearing was held on June 1, 2020. The landlord’s agent and two witnesses for the landlord attended, were given an opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses. The tenant did not attend.

The landlord’s agent (the “landlord”) testified that she served the Notice of Dispute Resolution Proceeding package on the tenant by posting to his front door on May 21, 2020. Based on the undisputed evidence of the landlord I find that the tenant was served in compliance with the Act and section 9 of the *Residential Tenancy (COVID-19) Order*, MO 73/2020 (*Emergency Program Act*).

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. Further, only relevant testimony has been included in this Decision.

### Issues

1. Is the landlord entitled to end the tenancy pursuant to section 56 of the Act?
2. Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on November 19, 2017 and the tenant pays \$415.00 in monthly rent. He also paid a security deposit of \$202.50 which the landlord retains in trust. A copy of a written tenancy agreement was submitted into evidence.

The landlord testified that the tenant has caused a significant amount of damage by his repeated flooding of the rental unit. The flooding has occurred on at least five occasions, with the most recent flooding having occurred in May 2020. Water has poured into the suite below his, causing significant mold to develop. The tenant has thrown things off his balcony, left a shopping cart in front of the fire exit or elevator, and is engaged in frequent and nightly boatbuilding projects, much to the frustration and disturbance of the other residents.

The landlord's witness (who lives down the hall from the tenant) testified that she told the tenant that he could not leave a shopping cart in the hallway because it created a fire hazard. His response was, "I'll do what I want."

Most alarming is the tenant's break-and-enter into the rental unit below him, which occurred at night while the female tenant was asleep. A police report was filed. There is a photograph taken from the exterior of the building depicting a ladder which the tenant allegedly used to break into the apartment.

Numerous other photographs were submitted which showed the water flooding from the rental unit, and there were several copies of emails in which various other tenants complained of the tenant and in which they feared for their safety.

### Analysis

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.

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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
    - (A) 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.

In this case, the evidence clearly shows that the tenant has significantly interfered with or unreasonably disturbed another occupant by his flooding and construction projects (which cause large amounts of noise throughout the night). By his flooding, the tenant has, I find, put the landlord's property at significant risk, not to mention seriously jeopardizing the health and safety and lawful right and interest of the other occupants and the landlord. Finally, and most alarming, is the tenant's break-in into another occupant's apartment. This is, I conclude, illegal activity (section 348(1) of the *Criminal Code*) that has, based on the statements and evidence, adversely affected the quiet enjoyment and security of the occupant of the apartment into which he broke.

There is no circumstance by which it would be reasonable or fair to both the landlord and the other occupants of the residential property that they ought to wait for a notice to end tenancy under section 47. Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim that the tenancy must end immediately under section 56 of the Act. It is so ordered.

Pursuant to section 56(1) of the Act I grant the landlord an order of possession in respect of the rental unit.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party.

A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the filing fee of \$100.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” Given that the tenancy has now ended, I order that the landlord may retain \$100.00 of the tenant’s security deposit in satisfaction of the above-noted award. (The balance of the security deposit must be dealt with under section 38 of the Act.)

### Conclusion

I grant the landlord’s application.

I order that the tenancy is ended effective immediately.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia. It should be noted that orders of possession granted under section 56 of the Act are enforceable during the provincial state of emergency.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 9, 2020

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Residential Tenancy Branch