



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

On July 24, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

H.M., T.K., and K.B. attended the hearing as agents for the Landlord. The Tenant attended the hearing with J.K. attending the hearing as well. All in attendance provided a solemn affirmation.

J.K. stated that he was a co-tenant; however, the tenancy agreement submitted as documentary evidence indicated that he was an occupant of the Tenant’s. He advised that the Tenant’s name and his name on this tenancy agreement were noted incorrectly. Regardless, while he maintained that he was a co-tenant and that he had in his possession a tenancy agreement which supported this belief, he did submit any proof of this agreement. He then contradictorily acknowledged that the only valid tenancy agreement was the copy before me, that was submitted as documentary evidence. When reviewing the undisputed documents before me, it is clear that J.K. is an occupant of the Tenant. As such, he has been removed as a tenant in the style of cause on the first page of this Decision. Furthermore, the correct identities of the parties were confirmed and updated on the style of cause as well.

T.K. advised that he served a Notice of Hearing and evidence package by registered mail to the Tenant and to J.K. on July 25, 2020, and he also posted these packages to the Tenant’s door (the registered mail tracking numbers are on the first page of this Decision). J.K. confirmed receiving these packages on the door on July 26, 2020 and while he advised that these packages were not received by registered mail, the tracking

history of these packages does indicate that these were also delivered on July 27, 2020. Regardless, based on this undisputed testimony and as the Tenant was present during the hearing, I am satisfied that the Tenant was served the Notice of Hearing and evidence package in accordance with Sections 89 and 90 of the *Act*. Furthermore, the Landlord's evidence will be accepted and considered when rendering this Decision.

J.K. advised that there was no evidence submitted by the Tenant for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee for this Application from the Tenant?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2017, that the rent was currently established at \$1,241.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

H.M. advised that there have been multiple visits by the police due to violence from J.K. against his mother, the Tenant. On or around mid-June 2020, the police attended and took the Tenant away to live in a safe house to protect her from her son. She stated that the Tenant has often expressed fear of her son, that he is violent and out of control, that he likes to play with fire, and that she has hid from her son in the Landlord's office. H.M.

confirmed that the Tenant now lives at an unconfirmed address away from her son, and that she has not lived in the rental unit since mid-June 2020.

H.M. then testified that on July 3, 2020, she was advised of a huge leak that originated from the rental unit and was flowing into the hallway. She contacted a plumber who investigated the source of the leak and discovered that a pipe underneath the sink faucet, in the rental unit, was deliberately disconnected. This was clearly done intentionally as it would have been impossible for this to have been disconnected in this manner through the normal course of use. During this investigation, pictures of the rental unit were taken and submitted as documentary evidence. These pictures depict piles of garbage and debris everywhere and large holes in the drywall, which appear to have been punched through or removed entirely.

K.B. advised that J.K.'s sister had called from another province, cautioning her that she was worried about J.K., that she feared that he might do something drastic, and she warned that "shots may be fired" by J.K. if anyone attended the rental unit. K.B. advised that the police were called about this incident and they warned the Landlord not to have anyone approach the rental unit, for their own safety.

She confirmed that the Tenant vacated the rental unit in mid-June 2020 permanently. She stated that around this time, there was an incident in the rental unit where there was a tremendous amount of noise and loud music emanating from the rental unit, as well as a lot of smoke. She testified that the situation has only escalated since this point.

H.M. advised that on July 20, 2020, agents for the Landlord heard a "huge amount of noise" coming from the shared laundry room, and when they went to investigate, the dryers were turned upside down. One of these agents asked J.K. why he did this and J.K. stated that the dryers would not accept his payment card as there was no money on them.

The Landlord also submitted multiple letters, as documentary evidence, from other residents of the building confirming that a massive amount of debris and drywall has been thrown out of the rental unit onto the ground, that J.K. was observed to have been doing this and breaking property, that the rental unit balcony is full of drywall, construction debris, garbage, and a broken door, that there were major noise and smoke issues attributed to the rental unit, and that J.K. paces around the building on drugs and demonstrates threatening behaviour.

The Tenant confirmed that she has been living in a different location for her safety and that she does want the tenancy to end; however, she wanted J.K. to speak for her.

J.K. advised that he has a “past”, but he has not been charged with anything recently. He confirmed that he likes to play with fire, but he has not started any fires in the rental unit. Regarding the pictures that the Landlord submitted, he confirmed that there was a flood and that a “flex pipe” was shooting out water. He claimed that the drywall absorbed the water, and this created “mold everywhere”. He stated that he could not contact his insurance company because he did not have a phone and that “personal issues” also prevented him from contacting this company. As he stated that he “has to breathe oxygen”, he acknowledged making the holes in the drywall as it was his attempt to deal with the alleged mold. In response to the question of why he elected to touch the drywall himself, he stated, “why wouldn’t I?” and that it was removed because it was “humid, smelly, and hard to breathe.”

Regarding the issue with the dryers, he disputed that he turned these dryers upside down. He stated that he laid them on their side as he dropped his payment card under them, and he was looking for it.

Regarding the allegations of domestic violence, he refuted that there was domestic violence, but any issues that are happening are between him and the Tenant.

The Tenant confirmed that she has been living in a different location for “one or two months” for her own safety. She stated that she “wants to distance her[self] from her[sic] son because he sometimes gets incredibly angry and throws plates.”

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant, or a person permitted on the residential property by the Tenant, has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *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 the tenancy under section 47 [landlord's notice: cause] to take effect.*

When reviewing the totality of the evidence before me, I find it most important to note that the Tenant acknowledged that she does not even live in her own rental unit due to fears for her safety from her own son. This confirmation from the Tenant about her son's behavioural issues causes me to give more weight to the legitimacy of the Landlord's submissions.

Furthermore, while J.K. attempted to dispute the allegation that he intentionally caused the flood in the rental unit, he mentioned that he had attempted to contact his insurance company. If he had not been responsible for the flood, it is not clear to me why he would have attempted to call his insurance company. This causes me to doubt his denial that this was not caused deliberately by him.

Moreover, he advised that he removed the drywall because of the development of mold; however, it is not clear to me what authority he had to touch the drywall. In addition, when reviewing the pictures submitted, it is evident that there is extensive damage and large holes in the drywall that would not appear to be any form of repair or remediation. In my view, it is without question that the holes in the walls appear to be intentional and substantial damage that in no way could be perceived to be any form of repair or remediation. As a result, I give no weight to J.K.'s claim that this was his attempt at dealing with an alleged mold issue.

Based on the above safety concerns and J.K.'s combative and hostile demeanour during the conference call, I am highly doubtful of J.K.'s attempt to explain this damage as his efforts to remediate any flooding issue. Rather, I find this to be an implausible explanation for the damage, and this leads me to doubt further the credibility of his testimony.

Finally, J.K. claimed not to have turned the dryers upside down, but simply laid them on their side. While he provided an explanation for doing so, I am doubtful of this reasoning as it is not consistent with common sense or ordinary human experience. In conjunction with the above doubts, I find his rationale to be a dubious and unbelievable explanation for flipping these appliances.

I find that J.K.'s erratic, hostile demeanour during the hearing, combined with his illogical explanations for the allegations against him, cause me to be doubtful of his credibility on the whole. As a result, I find it more likely than not that the Landlord's evidence is more compelling and persuasive. As such, I prefer the Landlord's evidence.

Ultimately, I am satisfied that J.K.'s behaviours and actions were likely intentional, malicious, and that they pose a danger that would fall into the categories of: seriously jeopardizing the health or safety or a lawful right or interest of the Landlord, putting the Landlord's property at significant risk, and causing extraordinary damage to the residential property.

The Landlord must also demonstrate that "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 the tenancy under section 47 for cause" to take effect. Based on the consistent evidence and testimony of J.K.'s troublesome past and current behavior, in addition to the fact that the Tenant, who is J.K.'s mother, can no longer live in the rental unit out of fear for her own safety, I accept that J.K. has substantially damaged the rental unit, that he has exhibited dangerous and unpredictable behaviours, and there is likely a genuine concern for the ongoing safety of the other residents of the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of the amount awarded.

### Conclusion

I grant an Order of Possession to the Landlord 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.

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: August 7, 2020

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Residential Tenancy Branch