



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: ET, FFL

### Introduction

In this dispute, the landlord seeks an order under section 56.1 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on August 10, 2020 and a dispute resolution hearing was held, by teleconference, on August 25, 2020. Landlord’s counsel, along with two members of the landlord’s family, attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenants did not attend.

Landlord’s counsel stated that the Notice of Expedited Hearing - Dispute Resolution Proceeding was served on the tenants by being attached to the door of the rental unit on August 12, 2020. A copy of the notice along with a Proof of Service was tendered into evidence. Finally, counsel remarked that he had driven by the property on Sunday, August 23, 2020 and had noted that the notice had been removed from the door.

Based on the above undisputed oral and documentary evidence I find that the tenants were served the Notice of Expedited Hearing in compliance with sections 59(3) 89(2)(d) of the Act, and with Rule 10.3 of the *Rules of Procedure*, under the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

### Issues

1. Is the landlord entitled to an order under section 56.1 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

### Background and Evidence

By way of background, the tenancy began on November 1, 2017 and the tenants currently resides in the rental unit, which is a house on a tree-lined street in a pleasant, residential neighbourhood. Monthly rent (which the tenant has stopped paying since May 2020) is \$2,100.00. The tenants paid a security deposit of \$1,050.00. A copy of the written tenancy agreement was submitted into evidence.

On May 4, 2020, there occurred a big grease fire in the kitchen. The fire was of such magnitude that all the windows of the house were blown out and the house was utterly damaged by the fire. It is, according to landlord's counsel, uninhabitable. A few days after the fire, a hazardous materials inspection was conducted on May 11, 2020. On May 22, 2020, a report from that inspection was produced; a copy of the report was submitted in evidence.

The 35-page report, which includes several photographs of the interior and exterior of the house, establishes the extensive damage. The report references the extensive remediation that must be carried out in order to make the property habitable, and it frequently cites the existence of asbestos, lead, silica, mercury, and so forth. Personal protection equipment must be worn during the remediation work.

Counsel then provided his legal argument regarding the basis on which I might grant an order under section 56.1 of the Act. This is examined in the next section.

### 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. In this application, the landlord seeks an order under section 56.1 of the Act.

Section 56.1 of the Act states as follows:

- (1) A landlord may make an application for dispute resolution requesting an order
  - (a) ending a tenancy because
    - (i) the rental unit is uninhabitable, or

- (ii) the tenancy agreement is otherwise frustrated, and
  - (b) granting the landlord an order of possession of the rental unit.
- (2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order
  - (a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and
  - (b) specifying the effective date of the order of possession.

In this application, I find that the evidence – primarily the hazardous materials report and the accompanying photographs – proves, on a balance of probabilities, that the rental unit is uninhabitable. Moreover, the uninhabitability of the rental unit frustrates the tenancy agreement. In other words, the landlord is unable to provide a rental unit that is required under the tenancy because of an intervening event, namely, the fire.

Taking into consideration all the undisputed documentary evidence and submissions of counsel 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 for an order under section 56.1 of the Act.

Therefore, pursuant to sections 56.1(1) and (2) of the Act, I hereby order that the tenancy ended effective May 4, 2020, and, that the effective date of the order of possession is two days after the order of possession is served on the tenants.

The order of possession is issued in conjunction with this decision.

### **Claim for Recovery of Filing Fee**

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 applicant was successful, I grant their claim for reimbursement of the \$100.00 filing fee.

A monetary order in the amount of \$100.00 is issued in conjunction with this decision.

Conclusion

I hereby order that the tenancy ended on May 4, 2020.

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two (2) days from the date of service. If necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 25, 2020

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Residential Tenancy Branch