



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

On October 2, 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 Section 72 of the *Act*.

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

The Landlord advised that the Tenant was served the Notice of Hearing and evidence package by hand on October 5, 2020 and the Tenant confirmed that he received this package. Based on this undisputed evidence, 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*. As such, the Landlord’s evidence will be accepted and considered when rendering this Decision.

The Tenant advised that he did not submit any evidence 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?

### 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, 2019, that the rent was currently established at \$1,100.00 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Tenant had been smoking in the rental unit, contrary to the tenancy agreement, for at least nine months. He stated that he warned the Tenant verbally, but the Tenant continued to smoke. He received multiple complaints in writing from other residents of the building because the Tenant's continual smoking was affecting their health. On July 31, 2020, the Landlord conducted an annual inspection of the rental unit and discovered cigarette burn marks on the carpet, and the rental unit smelled of smoke.

On August 21, 2020, the Tenant was served a breach letter to refrain from smoking in the rental unit; however, the Tenant continued to smoke. The Landlord submitted that he was advised that on September 26, 2020, a resident of the building heard the Tenant's smoke detector beeping so he pounded on the Tenant's door. The Tenant answered the door but was very disoriented. The resident discovered that the source of the smoke was coming from a toilet paper roll that was on fire in the bathroom. This fire was put out, but the resident observed numerous, discarded cigarettes in an ashtray in the rental unit. The Landlord speculated that the fire was caused by the Tenant leaving a lit cigarette on the toilet paper roll.

The Tenant confirmed that he has smoked for 60 years, that he has smoked in the rental unit, and that he continues to smoke in the rental unit despite being warned to refrain by the Landlord. Regarding the September 26, 2020 incident, he advised that there was no actual fire, but the toilet paper roll was simply smouldering. He does not know what caused this. On that day, he smelled smoke, but he believed it was coming from outside the rental unit. He stated that he checked all around his unit and then discovered that the smoke was coming from his bathroom. He put out the smoke and he turned on a fan. He stated that he never discovered the cause of this, nor did he investigate what may have started it.

He stated that he lives alone and that he was alone when he discovered the smoke. However, he then advised that a woman had visited him earlier and that it was “quite possible” that she may have been to blame for the smoke issue in the bathroom. He did not elaborate on this or submit any evidence to corroborate this submission.

The Landlord advised that he has reviewed the security camera footage and the Tenant had no guests visit the rental unit that day. He did confirm that the resident who reported the smoke had been observed on the security camera footage, as per the incident report.

During the hearing, the parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision and the Order of Possession that accompanies it.

#### Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The Tenant will give up vacant possession of the rental unit by **1:00 PM on November 30, 2020 after service of this Order** on the Tenant.
2. The Tenant must pay to the Landlord the amount of **\$1,100.00** for November 2020 rent, as per the terms of the tenancy agreement.
3. The Tenant shall refrain from smoking on the residential property or in the rental unit, as per the tenancy agreement.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters with respect to possession of the rental unit.

### Conclusion

I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, the Landlord is granted an Order of Possession effective at **1:00 PM on November 30, 2020 after service of this Order** 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 and 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: October 16, 2020

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Residential Tenancy Branch