



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

The landlord filed an Application for Dispute Resolution on October 6, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on October 20, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not.

The landlord stated that they delivered notice of this dispute resolution to the tenants through registered mail. They provided a proof of service document, and an enclosed receipt shows this was on the day of their Application. They sent additional evidence via registered mail to the tenant one week later.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the *Act*.

The tenants did not attend the hearing and did not provide any documentary evidence in advance.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all oral testimony and documentary evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause.

The landlord confirmed there is a tenancy agreement in place. They did not provide a copy of it for this hearing; however, they stated "there was a formal agreement signed." The tenant moved in to the unit in October 2019. The rent amount is \$800.00 per month. They initially paid a security deposit of \$400.00.

The tenant stopped paying rent in June 2020 and is "just sitting there". The landlord tried to complete repairs within the unit; however, the tenant would not let workers enter the unit. A letter dated October 8, 2020 from an electrical repair company refers to their visit of July 17, 2020. This was a visit to restore power. The company sets out in the letter that they "could continue to check unit as the severe unsanitary conditions were unsafe for [them] to remain in that unit." They stated they advised the tenant that the unit would have to be "cleaned up and vacated" before they could enter the unit.

The landlord applies for an end of tenancy based on the "immediate and severe risk to the rental property, other occupants or the landlord." They served a One-Month Notice to End Tenancy for Cause (the "One-Month Notice") on September 1, 2020 for reasons involving late payment of rent. Additionally, the One-Month Notice provides that "[their] actions to have a contractor electrician to fix wiring problems is futile as [their] suite is a fire hazard and messy as to no access to fix problem as we have tried to do".

That document specified the end-of-tenancy date of September 30, 2020. By that date, the tenant had not communicated any information on a move out. The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent, issued on October 2, 2020. The tenant will not hear any queries from the landlord and closes the door to the unit when approached directly on these issues. As of the date of the hearing, the tenant is still in the unit. When approached by the landlord in the parking lot of the property last week, they stated they were "speaking to [their] lawyer."

The landlord provided three photos to show severe disarray within the unit. Particularly concerning to them was the position of furniture right against the heat provider within the unit.

The furnace is now on, and everything is stacked up and could immediately cause a fire. A sofa unit is upended and leaning directly against the heating unit. There is other miscellaneous detritus throughout the unit. They present this constitutes a high risk of danger for fire, and in the immediate ensuing colder months the furnace will be on constantly. Attempts to speak with the tenant on this issue are rejected, with the tenant stating the landlord is “harassing [them] for rent.”

### Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may 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 tenancy were given under section 47 [*landlord’ notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (a) The tenant or a person permitted on the residential property by the tenant has done any of the following:
    - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
    - (iii) put the landlord’ property at significant risk;
- . . .

I have considered the evidence of the landlord concerning the evidence of the state of the unit.

I find there is sufficient evidence to show the tenant is the source of legitimate concern over significant risk to the property. This is specified by section 56(a)(iii) above. The evidence presented by the landlord shows this risk. This also places the safety of other tenants at risk with a high risk of fire in the upcoming colder months with the furnace on.

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlord to wait for a set-period Notice to End Tenancy to take effect. The evidence established by the landlord shows they previously served two notices to end tenancy that the tenant did not dispute. The tenant did not abide by the set move-out date specified on those notices that were duly served in accordance with the *Act*. In short, the landlord has waited for each of the notices to take effect. I find this merits an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the landlord were successful in this application, I find they are is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

For the reasons above, 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 *Act*.

Dated: October 21, 2020

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Residential Tenancy Branch