



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an early termination of the tenancy and an Order of Possession pursuant to section 56 of the Act, and to recover the cost of their filing fee.

An agent for the Landlord, G.K. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended for the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing besides me was the Agent, who indicated that she was ready to proceed. I also confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

The Landlord submitted a Proof of Service of the Application, Notice of Hearing documents and the documentary evidence on the Tenant. The Proof of Service said that the Landlord served the Tenant with these documents in person on November 3, 2020. The Agent was the witness to this service, and she confirmed in the hearing that the Landlord had served the Tenant with these documents. Further, the Landlord submitted a photograph of him serving the Tenant with these documents.

As a result of this evidence and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the Application and documentary evidence on November 3, 2020.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The Landlord provided his email address in the Application, and the Agent confirmed its accuracy in the hearing. She also confirmed her understanding that the Decision would be emailed to the Landlords and mailed to the Tenant, with any orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the early termination of the tenancy in accordance with section 56 of the Act?

### Background and Evidence

The Landlord submitted the Parties' tenancy agreement, and in the hearing, the Agent confirmed the following details of the tenancy. The fixed-term tenancy began on December 1, 2020, running to December 1, 2021, with a monthly rent of \$800.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of \$400.00, and no pet damage deposit.

In the hearing, the Agent said that the reason she and the Landlord seek an early termination of the tenancy and an order of possession is because

He smokes inside and my son has asthma. And he punches the wall and makes weird noises. He is going to break something, and the fire could happen. He makes trouble with the neighbour and he is making noises. One day he broke the plants and scared the neighbours. And he's not giving the rent. He makes holes in the wall and the kitchen cabinets, the roof lights, we need to renovate the whole basement.

The Landlord submitted a letter from another tenant in the residential property, T.M.L., who wrote:

My name is [T.M.L.]. I have a complaint against [the Tenant] who lives at [residential property address] in the basement. I live at the same address but in a different basement. He smokes all the time inside and outside the basement. He also makes a lot of noise at night which disturbs everyone. Police also came looking for him and I have small kids which are scared of him. I am concerned about my kids' safety.

Contact no. – [telephone number provided] [Signature]

The Agent said that they have two children, as well, aged four and seven. She said that her seven-year-old has asthma, and that it makes it difficult for the son to breathe when the Tenant smokes, which is against the rules of the tenancy agreement. "We can't even breathe here at home when he smokes inside. It's very difficult for us", she said.

The Agent said:

My kids' safety - we are scared all the time. On the 24<sup>th</sup> of October he tried to break my front door. The police found him with a knife, and he was on the drugs. We want you to move him away. It's for our safety reasons. The police said to go to the tenancy branch, because he's not good for the kids. One day he put the chicken in the oven, and he slept. The whole house made the smell. He said he forgot that he put the chicken in the oven. It can catch fire. He broke the fire alarm in the kitchen.

I asked the Agent why it would be unreasonable, or unfair to the Landlord or other occupants of the residential property to wait for a One Month Notice to End the Tenancy for Cause to take effect. She said:

So, because the first thing is the safety reason. He can do anything any day. The police said that when they arrested him, he was under drugs. He is usually under drugs on the weekends; he is yelling loudly. Two to three months ago, his girlfriend was there, and he was beating her, and the police would come here and arrest him. Every day and night we are scared, and my kids can't sleep. And because of the smoking, we have to go outside. . . We're scared when's he punching the walls, we can't sleep properly. The police told us to immediately go to the RTB, because they can't move him without it.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

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 case, the Landlord.

Section 56 of the Act establishes grounds on which a landlord may apply for dispute resolution to request an early termination of a tenancy and order of possession. In order

to grant such an order, I need to be satisfied that the Tenant has done any of the following:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. has 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;
5. has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
6. 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 tenancy under section 47 to take effect.

In this case, I find that the Landlord has established on a balance of probabilities that the Tenant did the first five actions in the above noted list. The Agent and the other tenant have said that they are afraid of the Tenant, and afraid for the safety of their respective children. They both said that the police attend the rental unit for reasons including the following: (i) because the police are looking for him; (ii) because of fights he had with a girlfriend in the unit; (iii) he tried to break into the Landlords' suite with a knife in his possession and while affected by drugs. The Agent immediately called the police.

Further, the Tenant left a chicken cooking in the oven while he slept, which I find was especially dangerous to all residents of the residential property, because the Tenant disconnected the smoke detector.

I find it is more likely than not that the Landlord's undisputed evidence is true and accurate.

I find the Landlord's evidence to be internally consistent and credible, as well as being undisputed by the Tenant.

Based on the evidence before me overall, I find that the Landlord has met the burden of

proof in this matter. I further find that it would be unreasonable and unfair for the Landlord or other occupants to wait for a One Month Notice to End Tenancy to take effect.

Accordingly, and pursuant to section 56(1) of the Act, I Order that the tenancy is ended two days from the date on which the Order of Possession is served on the Tenant. I grant the Landlord an Order of Possession, which must be served on the Tenant and is effective two days after the Tenant is deemed by section 90 of the Act to have received the Order of Possession.

### Conclusion

The Landlord is successful in his Application. I find that the Landlord has established on a balance of probabilities that the Tenant's behaviour warrants an early termination of the tenancy and an Order of Possession, pursuant to section 56 of the Act. Accordingly, I Order that the tenancy is ended two days from the date on which the Order of Possession is deemed served on the Tenant.

I grant the Landlord an Order of Possession, which must be served on the Tenant, and which is effective two days from the date of service on the Tenant.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 17, 2020

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Residential Tenancy Branch