



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords under the Residential Tenancy Act (the Act), seeking an order ending the tenancy early pursuant to section 56 of the Act and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, both of whom provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlords testified that all of their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were posted to the door of the rental unit by them on December 5, 2020, one day after the Notice of Dispute Resolution Proceeding Package was made available to them by the Branch. They submitted photographic evidence and a witnessed and signed proof of service form in support of this testimony. As a result of the above, and pursuant to sections 88, 89 and 90 of the Act, and rule 10.3 of the Rules of Procedure, I find that the Tenant was deemed served with the above noted documents on December 8, 2020, if not earlier received, five days after they were posted to the door of the rental unit.

The Landlords stated that on December 18, 2020, they received written correspondence from the Tenant stating that the Tenant did not consider the situation emergent, that they would not be attending today's hearing due to work obligations, and stating that the hearing needs to be adjourned until January 18, 2021, which the Landlords stated in the hearing is the date of a different hearing in relation to applications filed by both parties regarding a One Month Notice. The Landlords read the letter to me during the hearing and provided it for my review and consideration upon my request.

Rule 5.1 of the Rules of Procedure states that the Branch will reschedule a dispute resolution hearing if signed written consent from both the applicant and the respondent is received by the Branch directly or through a Service BC Office not less than three days before the scheduled date for the dispute resolution hearing. Further to this, rule 5.2 states that when agreement to reschedule a hearing cannot be reached, a party or the party's agent may make a request at the hearing to adjourn the hearing under rule 7.8

The Landlords stated in the hearing that there was no agreement to reschedule as this is an urgent matter. As a result, I find that if the Tenant wished to seek an adjournment, they need to attend the hearing themselves or appoint an agent to attend on their behalf in order to request an adjournment as allowable under rule 7.8 of the Rules of Procedure. As neither the Tenant nor an agent acting on their behalf attended the hearing, I have not considered whether an adjournment is warranted pursuant to rule 7.9 of the Rules of Procedure.

As I am satisfied as set out above the Tenant was properly served with the Application, the Notice of Hearing, and the documentary evidence before me from the Landlords, I therefore accept the Landlords' documentary evidence for consideration in this matter and the hearing therefore proceeded as scheduled pursuant to rule 7.3 of the Rules of Procedure, despite the absence of the Tenant or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the Landlords' request, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided by them in the Application.

### Preliminary Matters

Although a very large number of digital documents were submitted by the Tenant for my review, which the Landlords acknowledged receiving off their door on either December 18<sup>th</sup> or December 19<sup>th</sup>, 2020, the Tenant did not appear at the hearing or send anyone to appear at the hearing on their behalf to speak to or present this documentary evidence for my consideration.

Pursuant to rule 7.4 of the Rules of Procedure, I have therefore not considered this documentary evidence unless specifically referred to by the Landlords in the hearing.

### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for the rental unit under section 56 of the Act?

Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term for the tenancy began on October 1, 2020, and is set to end on September 30, 2021. The tenancy agreement and attached addendum state that rent in the amount of \$1,250.00 is due on the first day of each month, \$1,100.00 of which is for rent and \$150.00 of which is for utilities. The tenancy agreement also states that a security deposit in the amount of \$550.00 was required.

The Landlords, who also reside on the residential premises in an attached but separate portion of the home in which the rental unit is located, stated that they fear for their own safety and the safety of their pets as the Tenant has been verbally aggressive and abusive to them in person and in writing and attempts to harm their dogs by letting them out of the yard without consent. They stated that the situation has gotten so bad that the RCMP have had to be involved when entering the rental unit for lawful purposes and with proper notice, for their own health and safety and the health and safety of contractors hired to enter the rental unit, such as plumbers and electricians. The Landlords provided me with police file numbers in support of this testimony and stated that the RCMP are willing to provide testimony to this affect if called upon by the Residential Tenancy Branch (the Branch) to do so, and that they have been advised by

the RCMP to contact them as required for interactions with the Tenant, due to the Tenants aggressive and abusive behavior.

The Landlords stated that the Tenant presents a significant risk to them and the property, as they burn candles inside and outside of the rental unit, and on at least one occasion, burned a candle on their window ledge between drawn curtains and the window, presenting a very serious safety risk.

The Landlords stated that the Tenant has also prevented lawful access to the rental unit when served with proper notice of entry. Most recently, the Landlords stated that proper notice to enter the rental unit was posted to the door of the rental unit on November 17, 2020, stating that they and an electrician would be entering the rental unit on November 23, 2020, between 9:00 A.M. – 5:00 P.M. for the purpose of accessing the electrical panel for the home, which is located within the rental unit, so that repairs to the home could be completed. The Landlords stated that when they attended the rental unit as scheduled with the police in attendance and attempted to enter the rental unit, the Tenant physically prevented them from entering. The Landlords stated that the Tenant has also denied them entry in writing when served with a notice of entry and although they acknowledged incorrectly entering the rental unit without having first given proper notice due to a dating error on the notice of entry, they stated that proper notice under the Act has been given for all other entries.

The Landlord stated that the Tenant has, on several occasions, manually turned off the hot water tank and electricity to portions of their home, as the electrical panel for the home and the hot water tank are located in the rental unit, presenting both an inconvenience to the Landlords and a serious risk to the property as the carbon monoxide detectors and some detectors due not work when the power is off. Finally, the Landlords stated that the Tenant turned up the temperature on the hot water so significantly that it presented a serious burn risk.

As a result of the above, the Landlords sought an early end to the tenancy under section 56 of the Act and argued that due to the above noted health and safety concerns, it would be unreasonable, or unfair to the them as they are both Landlords and occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

The Landlords submitted a substantial amount of documentary evidence for my consideration in support of their testimony in the hearing, including but not limited to

copies of notices of entry for the rental unit, photographs, written statements, and copies of written correspondence received from the Tenant.

No one appeared at the hearing on behalf of the Tenant to provide any documentary evidence or testimony for my consideration, despite my finding earlier in this decision that the Tenant was deemed served with Notice of the Hearing in compliance with the Act and the Rules of Procedure on December 8, 2020.

### Analysis

Section 56 of the *Act* states the following with regards to ending a tenancy early:

#### **Application for order ending tenancy early**

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

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord's property at significant risk;
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) 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, or

- (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
  - (v) caused extraordinary damage to the residential property, and
  - (b) it would be unreasonable, or unfair to the landlord 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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Based on the uncontested documentary evidence and affirmed testimony before me for consideration from the Landlords, I am satisfied on a balance of probabilities that the Landlords have cause to end the tenancy early because the Tenant has significantly interfered with or unreasonably disturbed the Landlords, seriously jeopardized the health or safety or a lawful right or interest of the Landlords, and put the Landlords' property at significant risk. I am also satisfied that it would be unreasonable or unfair to the Landlords who are also occupants of the residential property, due to the health and safety risk posed by the Tenant, to wait for a notice to end tenancy under section 47 to take effect.

Based on the above and pursuant to section 56 of the Act, the Landlords are entitled to an Order of possession for the rental unit effective two days after service of the order on the Tenant.

Pursuant to sections 67 and 72 of the Act, the Landlords are also entitled to recovery of the \$100.00 filing fee, either by way of the attached Monetary Order or through retention of \$100.00 from any security deposit paid by the Tenant and still retained by the Landlords as of the date of the hearing. The balance of the security deposit must be dealt with in accordance with the Act.

### Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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.

Pursuant to section 67 of the Act, I grant the Landlords a Monetary Order in the amount of **\$100.00**. The Landlords are provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Monetary Order, the Landlords may retain \$100.00 from the Tenant's security deposit, should they wish to do so.

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: December 22, 2020

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Residential Tenancy Branch