



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: ET, FFL

### Introduction

The landlord applied for orders under section 56 of the *Residential Tenancy Act* ("Act"). They also applied for recovery of the filing fee under section 72 of the Act. On January 28, 2021 the landlord attended the hearing, while the tenants did not.

The landlord confirmed that she had served the tenants with the Notice of Dispute Resolution Proceeding package. Copies of the Canada Post registered mail tracking information was submitted, and which indicated that they had received the Notice.

### Issues

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have only reviewed and considered evidence meeting the requirements of the *Rules of Procedure*, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The landlord testified that she was seeking an early end of tenancy under section 56 of the Act for the reasons provided in her application, which reads as follows:

[tenants] were severed One Month Notice to End Tenancy For Cause for breaching agreement conditions, yelling middle of night causing disturbance, smoking inside. Mr. [tenant] was arrested, has no go to property but still comes there. Ms. [tenant] has given threats to tenants living upstairs that she will cause physical harm to them. [municipal] Police has been to the property many times for causing disturbance. For upstairs tenants safety it is important that they move out soon

An audio recording made by the upstairs tenants was submitted in evidence and which depict disturbing screaming and threats. The landlord testified that the tenants have threatened the upstairs tenants on many occasions for which the police have attended.

### 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.

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2)(a)(iv)(B) of the Act states that a landlord may apply for an order under section 56(1) if

the tenant or a person permitted on the residential property by the tenant has done any of the following: [. . .] 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 [and] 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.

In this case, the landlord's undisputed testimony, supported by audio evidence, supports a finding that the tenants engaged in illegal activity (that is, threats to harm, which is an illegal activity under the *Criminal Code*) that adversely affected the security, quiet enjoyment, safety, and physical well-being of the upstairs tenants (that is, other occupants of the residential property). Further, based on this evidence, I find that it would be both unreasonable and unfair to the other occupants of the residential tenancy to wait for a notice to end the tenancy under section 47 of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence 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 orders under section 56 of the Act.

Therefore, pursuant to section 56(1)(a) of the Act, I order that the tenancy is ended effective immediately. And, pursuant to section 56(1)(b) of the Act, I grant the landlord an order of possession.

As the landlord was successful in her application, I award her \$100.00 pursuant to section 72 of the Act as compensation for the application filing fee. Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain \$100.00 of the tenants’ security deposit in full satisfaction of the above-noted award.

### Conclusion

**I grant the landlord’s application.**

**I order that the tenancy is ended effective immediately.**

**I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. 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: January 28, 2021

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Residential Tenancy Branch