



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRUSTY SALES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

On January 14, 2021, 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 to Section 72 of the *Act*.

P.C. and M.R. attended the hearing as agents for the Landlord. Neither Tenant attended the hearing at any point during the 46-minute teleconference. All parties in attendance provided a solemn affirmation.

P.C. advised that he served each Tenant a Notice of Hearing and evidence package by registered mail on January 22, 2021 despite being required to serve by hand or by posting on the door (the registered mail tracking numbers are noted on the first page of this Decision). He stated that he did not serve by hand or by posting to the door because there have been ongoing incidents with the Tenants, and he did not feel safe serving these packages in either manner.

The registered mail tracking histories indicated that these packages were delivered on January 25, 2021. Based on this undisputed testimony, while the Notice of Hearing and evidence packages were not served in a manner pursuant to Rule 10.3 of the Rules of Procedure, I note that the packages were received by the Tenants on January 25, 2021. As this was three days after service and is the same number of days that these packages would have been deemed received if they were posted on the door on January 22, 2021, I am satisfied that the Tenants were sufficiently served the Notice of Hearing and evidence packages.

With respect to the evidence submitted, P.C. advised that he did not check to see if the Tenants could view the digital evidence pursuant to Rule 3.10.5. of the Rules of Procedure. As I am satisfied that the Tenants received the Landlord's documentary evidence, this will be accepted and considered when rendering this Decision. However, as the Landlord did not comply with Rule 3.10.5, this digital evidence will be excluded and not considered when rendering this Decision.

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.

P.C. advised that the tenancy started on March 1, 1996, that the rent was currently established at \$1,035.00 per month, and that it was due on the first day of each month. A security deposit of \$395.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He advised that the Landlord has had ongoing issues with the Tenants since 2015 and they have not been receptive to any warning letters they have received. They have also been combative to P.C., they have called him names, they have mimicked and mocked him, and they threatened his job. He stated that many residents of the building have made complaints about the Tenants because they make them feel unsafe due to their behaviours, actions, and comments, some of which have been racist. These complaints have been submitted as documentary evidence to support the Landlord's position. He stated on one occasion, the Tenants cornered a child of one of the residents in the

elevator, and while he did not know what they said specifically, the child was frightened and reported this incident.

He stated that in October 2020, the Tenants confronted him and forcibly opened the elevator door. While he does not remember all the details of this exchange, he testified that one of the Tenants threatened him by stating, "I'll take care of you". He did not report this incident to the police; however, warning letters were issued to the Tenants.

Finally, he advised that despite notices throughout the building and multiple warning letters, the Tenants refuse to wear masks in public areas of the building to comply with mandatory COVID-19 health protocols. He stated that there are many immuno-compromised individuals in the building, that the Landlord has received numerous complaints from other residents of the building regarding interactions with the mask-less Tenants, that these behaviours undermine the Landlord's efforts to keep the building effectively sanitized, and that the Tenants come and go from the building many times during the day. He stated that residents are fearful and are not sure what the Tenants are capable of. He also testified to the contents of several videos which depicted negative or hostile interactions between the mask-less Tenants and other residents of the building.

P.C. advised that the police have been involved regarding mask enforcement, and they attempted to serve the Tenants with tickets for non-compliance with provincial requirements to wear masks in public areas in the building. However, they were not able to serve these tickets to the Tenants because the Tenants have refused to answer the door. The police waited in various places in the building to catch the Tenants, and they have returned to the building multiple times in attempt to serve the Tenants these tickets, and to ensure that they are wearing masks as required.

M.R. advised that there are multiple, ongoing police files against the Tenants regarding the mask issue. Furthermore, she stated that the Landlord receives 10 to 15 complaints per day from other residents of the building with respect to the Tenants' behaviours and that if their safety continues to be compromised, the Landlord will in turn lose revenue. She referenced one video where she stated that the Tenants forcibly pushed open the elevator door in October 2020. She then referenced a document from a repair person that indicated that this type of action would cause damage to the elevator. P.C. stated that the elevator door would regularly get stuck after this incident, and M.R. stated that the elevator was eventually repaired on December 14, 2020. Finally, she cited four warning letters dated October 24, 2020, and December 10, 16, and 18, 2020 where the

Tenants were warned that masks must be worn in public areas of the building. However, despite these warnings, the Tenants continue to refuse to do so.

### Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the Act establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants, or a person permitted on the residential property by the Tenants, have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *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 the tenancy under section 47 [landlord's notice: cause] to take effect.*

I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In addition, the threshold of evidence required to justify an early end of tenancy Application is much higher than that of an Application for an Order of Possession based on a One Month Notice to End Tenancy for Cause. When reviewing the totality of the submissions before me, the undisputed evidence is that the Tenants are combative, argumentative, and possibly act in a juvenile manner. While many of their actions are offensive and

inappropriate, and while I acknowledge that many residents in the building feel uncomfortable or uneasy around the Tenants, I do not find that the Landlord has provided sufficient evidence to substantiate that these behaviours would somehow pose a risk to anyone's safety. As such, while I am satisfied that these actions and behaviours would justify ending the tenancy on a One Month Notice to End Tenancy for Cause, I do not find that the Landlord has provided sufficient evidence to satisfy this elevated threshold of an early end of tenancy Application based on these behaviours alone.

However, the undisputed evidence is that masks are required to be worn in public areas of the building and that the Tenants have not been doing so despite multiple warnings to comply for the safety of other residents in the building. Furthermore, the consistent evidence is that the police are now involved, that the police are issuing tickets for these infractions, that the police are continuing to investigate this ongoing matter, and that they have requested that they be contacted in future when the Tenants are observed not complying so that they can take further action and enforcement on the Tenants. I also accept that the Tenants are attempting to avoid the police in order to evade being reprimanded for these ongoing issues.

Based on the totality of the evidence before me, I am satisfied of the Landlord's submissions that the Tenants continually refuse to wear masks in public areas of the building to comply with mandated COVID-19 health protocols. Furthermore, I am satisfied from the Tenants' past combative and argumentative behaviours that they will continue to refuse to comply with wearing masks in public areas of the building as required. Given that the police are now involved, I find that this situation has clearly devolved to a point where enforcement has been determined to be necessary.

As such, I find that the combination of the behaviours and actions of the Tenants are clearly intentional, malicious, and that they could pose a danger that would fall into the category of seriously jeopardizing the health or safety or a lawful right or interest of the Landlord.

The Landlord must also demonstrate that "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 the tenancy under section 47 for cause" to take effect. Based on the consistent evidence and testimony of these troublesome past and current behaviors, I am satisfied that the Tenants will continue to refuse to wear masks in public areas of the building. Should the tenancy resume in this manner, this will greatly increase the likelihood of a

genuine concern for the ongoing safety of the property and of any persons that may attend the building.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to retain \$100.00 from the security deposit to satisfy this debt.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants 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 *Residential Tenancy Act*.

Dated: February 5, 2021

---

Residential Tenancy Branch