



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associated Property Management  
(2001) Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      ET, FFL

### **Introduction**

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on February 5, 2021, under the Residential Tenancy Act (the Act), seeking:

- An early end to the tenancy pursuant to section 56 of the Act; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord A.R. (the Agent), who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Agent was 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 respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that two packages, one for each of the Tenants, each containing the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were personally served on the Tenant B.E. by the Agent on February 11, 2021, in the presence of a witness D.D. The Agent submitted two witnessed and signed proof of service documents stating the same. Branch records indicate that the Notice of Dispute Resolution Proceeding Package was emailed to the Agent by the Residential Tenancy Branch (the Branch) on February 10, 2021, for service by February 11, 2021.

As a result of the above, and in the absence of any evidence to the contrary, I find that the Tenant B.E. was personally served with the above noted documents for the expedited hearing in accordance with the Act and the Rules of Procedure on February 11, 2021, pursuant to section 89(2)(a) of the Act. I also find that the Tenant R.B. was personally served with the above noted documents on February 11, 2021, in accordance with section 89(2)(c) of the Act.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. I verified that the hearing details contained in the Notice of Hearing were correct and noted that the Agent had no difficulty attending the hearing on time using this information. As a result, and as I am satisfied that the Tenants were properly notified of the hearing and the Application as set out above, and the Agent attended the hearing on time and ready to proceed, the hearing therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

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 request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

#### Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the Act?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the Act?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on December 15, 2018, and that it was set to continue on a month to month basis at the end of the fixed term on November 30, 2019. At the hearing the Agent confirmed that the tenancy continued on a month to month basis. The tenancy agreement state that rent in the amount of \$1,850.00 was due on the first day of each month at the start of the tenancy and at the hearing the Agent

stated that rent was never increased. The tenancy agreement also states that a security deposit in the amount of \$925.00 was required. At the hearing the Agent confirmed that the security deposit was paid and that the full amount of \$925.00 is currently held in trust by the Landlord.

The Agent testified that there have been a significant number of noise and other complaints to the Landlord regarding the Tenant B.E., who is also known as K.E., in recent months, from other occupants of the residential complex in which the rental unit is located. Although the Agent stated that the Landlord owns only the townhouse occupied by the Tenants, the rental unit shares walls with other occupants of the townhouse complex, as well as common property for the strata complex, such as the driveway. The Agent stated in the Application and at the hearing that the police were called to the rental unit more than 15 times in the 6 weeks preceding the Application, for noise complaints and other disturbances at the rental unit, suspected impaired operation of a motor vehicle by the Tenant B.E. at the townhouse complex, and blockage of the driveway and fire lane by the Tenants with their vehicles.

The Agent submitted numerous emails from other occupants of the residential property and the strata counsel complaining about the Tenants and their guests, and detailing noise complaints, other disturbances, and police involvement at the property, including suspected illegal substance use. In these emails the other occupants of the residential property expressed serious safety concerns for themselves, their families, and their guests, due to the behaviour of the Tenant B.E. and their guests, the repeated blockage of the fire lane and only driveway for the complex by the Tenants and their guests, and erratic driving by the Tenant B.E. in the complex. At the hearing the Agent reiterated that there are no sidewalks in the complex and only one long driveway, and stated that as a result, the Tenants' blockage of the driveway and fire land, and erratic driving in the complex present significant safety risks for other occupants who may need to drive or walk in and out of the complex or for emergency responders who may need access to the complex.

Further to this, the Agent stated that the Landlord is receiving fines from the strata due to the Tenants' conduct, and that the Tenants have caused extraordinary damage to the rental unit, which was only a few years old at the start of the tenancy, by kicking in the front door and garage door, putting large holes in the walls throughout the garage and rental unit (approximately three feet by one foot in diameter each), and by significantly staining and damaging the floors and counters and spray painting some exterior portions of the property.

Given the significant and frequent disturbances caused by the Tenants and their guests to the Landlord and the other occupants of the residential property, the continuing strata fines being levied against the Landlord for the Tenants' behavior, the significant health and safety risks posed to the other occupants of the residential property and their guests by the Tenants' behavior, including the blockage of the driveway and fire lane and erratic driving in the complex, and the ongoing risk to the Landlord's property of further damage by the Tenants and their guests, the Agent stated that it would be unreasonable and unfair to both the Landlord and other occupants of the residential property to wait for a One Month Notice under section 47 to take effect.

As a result, the Agent sought an early end to the tenancy as soon as possible pursuant to sections 56(2)(a)(i),(ii), (iii) and (v) of the Act. The Agents also sought authorization to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee. The Agent submitted copies of email correspondence and complaints about the Tenants between the strata, the Landlord, and other occupants of the residential property, copies of strata fines, a copy of the tenancy agreement, and a copy of a One Month Notice dated December 8, 2020, in support of the Application.

No one attended the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration.

### 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 compelling and uncontested documentary evidence and affirmed testimony before me for consideration from the Agent, I am satisfied on a balance of probabilities that a tenancy to which the Act applies exists, and that the Landlord has cause to end the tenancy early pursuant to section 56 of the Act because the Tenant or a person permitted on the property by the Tenant has 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 interest of the Landlord or another occupant, and put the Landlord's property at significant risk. I am also satisfied that the Tenants have caused extraordinary damage and that, under the circumstances, it would be unreasonable or unfair to both the Landlord and the other occupants of the residential property, 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 Landlord is entitled to an Order of possession effective two days after service of the order on the Tenants.

Pursuant to section 72 of the Act, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenants in recovery of the filing fee. 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 Landlord effective two days after service of this Order on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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. The Tenants are cautioned that costs of such enforcement are recoverable from them by the Landlord.

Pursuant to section 72 of the Act, the Landlord is also entitled to retain \$100.00 from the security deposit paid by the Tenants in recovery of the filing fee. The balance of the security deposit must be dealt with in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 2, 2021

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Residential Tenancy Branch