



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on or about March 1, 2021. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on March 6, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an early end of this tenancy and Order of Possession?  
Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began on February 14, 2021. The rental unit is a basement suite in a detached home with another occupant in the other half of the building. The monthly rent is \$1,400.00 payable on the first of each month. A security deposit of \$700.00 and pet damage deposit of \$700.00 were collected at the start of the tenancy and are still held by the landlord.

The landlord testified that since the tenancy commenced, they have received complaints from the upstairs neighbor about the pervasive smell of marijuana smoke from the rental unit. The landlord said that they had their agent attend the property and the agent reported observing a level of odor in the neighbouring unit far greater than would be expected from regular marijuana use from another suite.

The landlord called the upstairs neighbour as a witness. They testified that the smell has been overwhelming since the tenancy commenced. The neighbour said that the smell and smoke is continuous throughout the day, unavoidable due to the proximity of the suites, and causing significant negative health effects to their young children. The neighbour also said that they have recently had a baby and are concerned of bringing them home to the smoke and odors in the rental property. The landlord submitted into evidence medical notes from the neighbour's health provider stating the negative effects of the second hand smoke.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has 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.

Based on the evidence of the landlord, including the testimony of their witness and documentary materials, I find that the landlord has provided sufficient evidence to show that the tenant has unreasonably disturbed the other occupants of the property and their behaviour is a source of seriously jeopardy to the health, safety and lawful rights of others.

I accept the undisputed evidence of the landlord that the duration, frequency and intensity of the smoke and smells caused by the tenant exceed what would be reasonable and causes disturbance for the neighbouring unit. While some ambient smells and smoke may be expected in a multi-unit property, I am satisfied with the evidence that the level of the odor and smoke is far in excess of what would reasonably be expected and is at an intensity that causes significant health risks to others.

I find the testimony of the landlord's witness to be clear and cogent in detailing the duration of the smell and smoke, describing its intensity and explaining the negative health effects suffered by their family. I find the concerns of the landlord and their witness of the long-term effects of the smoke and smell on children and newborn infants to be reasonably based on medical opinion and common sense.

I further find that the nature of the health effects on children and infants makes it unreasonable to wait for a Notice to End Tenancy under section 47 to take effect. I

accept that bringing a newborn infant into an environment of smoke and pervasive marijuana odors would have significant detrimental health effects and the continuance of this tenancy would be unreasonable and unfair to the other occupants of the property.

Accordingly, I issue an Order of Possession to the landlord pursuant to section 56 of the *Act*.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$700.00 to \$600.00.

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: March 23, 2021

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Residential Tenancy Branch