



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

The landlord's two agents, landlord JS ("landlord") and "landlord JR," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 74 minutes.

The hearing began at 9:30 a.m. with the landlord's two agents, the landlord's "witness GB," and I present. The tenant called in late at 9:33 a.m. The tenant exited the call at 9:36 a.m. and called back in at 9:37 a.m. I informed the tenant about what occurred in his absences, as no evidence was discussed with the landlord. The hearing ended at 10:44 a.m.

The landlord confirmed that he was the manager of tenant relations and that he had permission to represent the landlord company named in this application. Landlord JR did not testify, as the landlord confirmed that landlord JR was only attended the hearing to observe for training purposes.

Witness GB provided affirmed testimony on behalf of the landlord at this hearing. She was excluded from the outset of the hearing and called back later to testify. Both parties had equal opportunities to question witness GB.

The tenant intended to call a witness, who was excluded from the outset of the hearing. When I asked the tenant if he wanted to recall his witness to testify, he stated that he did not because the witness would just repeat everything that the tenant already said.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

I explained the hearing and settlement processes to both parties. Both parties confirmed that they were ready to proceed with the hearing and they wanted me to make a decision regarding this application.

### Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness GB, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2019. Monthly rent in the amount of \$375.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. The tenant poses a serious threat to the landlord's rental building. There are 40 units in the rental building and mental health staff are present for 24 hours per day for 7 days per week. On February 27 and 28, 2021, the tenant caused a couple fires in his rental unit, the fire department had to be called, and the tenant said that it was baptism by fire. The landlord is responsible for maintaining the safety of other occupants in the rental building, the tenant has jeopardized their safety, and this has been an ongoing concern as the tenant has

threatened staff and other occupants. The landlord submitted photographs and reports of the complaints against the tenant, from November 2020 to present. The police and fire department attended on February 28, 2021, and photographs of the tenant's rental unit were submitted, including a burnt mask on the tenant's stove.

The landlord stated the following facts. As recently as the day before this hearing, the tenant came into the lobby of the rental building and threatened to rip the walls down if he was evicted, saying he would cause a "world of trouble" for the landlord if the tenant lost his home at the hearing. The tenant is aggressive, yells, swears, and calls names at other occupants and the landlord's staff at the rental property. The landlord received four complaints on March 30 and 31, 2021, against the tenant. The landlord has not issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant. The landlord cannot wait for a 1 Month Notice to take effect because the tenant is a clear and present danger to the landlord's property and has a willingness to disregard the property and other occupants in the rental building.

The landlord's witness GB testified regarding the following facts. On the morning of February 27, 2021, the tenant talked to the landlord's staff, saying he was mad that the smoke detectors in his rental unit were not working. The tenant told the landlord's staff that someone entered his rental unit and tried to light a fire. The landlord's staff looked at the surveillance cameras and saw that no one tried to enter the tenant's rental unit. The landlord's staff went to the tenant's rental unit and found paper and plastic on his stove and smelled smoke inside, so the fire department came. On February 28, 2021, another occupant smelled smoke coming from the tenant's rental unit and reported it to the landlord's staff. The landlord's staff went to the tenant's rental unit, found a shirt at the bottom of the door, found evidence of smoke, saw a burn mark on the floor, and the tenant denied it and said the smoke was coming from someone else. The fire department attended, found smoke in the tenant's rental unit, took photographs of the tenant's rental unit, and said that they were concerned about the tenant in the rental unit, since it was dangerous. The tenant has been harassing other occupants in the rental building. On the day before this hearing, the tenant threatened the landlord's staff and said he would tear down the walls of the rental building. The tenant frequently verbally abuses the landlord's staff.

The tenant testified regarding the following facts. He did not light any fires inside his rental unit. The photographs submitted by the landlord are not of the tenant's rental unit. The tenant's floor is a lighter colour and the stove photograph with a mask on it, is not the tenant's stove. The tenant did not cause any damages to his rental unit. The tenant could not get his social worker to sign a letter because the social worker was

worried about his job. The tenant's neighbours would not sign affidavits like they did at a previous RTB hearing that the tenant won, because they were scared. The tenant obtained a baptism certificate from a priest to conduct a baptism by fire in his rental unit. The tenant provided a certificate but redacted the name of the priest in the landlord's copy. A priest entered the tenant's rental unit without the tenant's permission, while the tenant was in his bathtub. The priest came with a person who looks like a twin of the tenant. The priest can be seen on camera between the elevators. There is a secret room behind the tenant's kitchen wall. The priest turned the tenant's stove element on low, put a receipt on which smoldered, and it caused way too much smoke. The tenant saw the smoke and turned his fan on and opened his windows. The tenant went downstairs and told the staff to call the fire department to test his fire alarm, which he found out worked fine.

The tenant stated the following facts. There was a second fire in the hallway that he does not know anything about. There was a third fire in the hallway centre, that was started by another occupant trying to frame the tenant for the fire. The tenant submitted photographs of his rental unit showing no damages and a letter from his neighbour. The tenant bought a camera and film and "bankrupted" himself. The tenant's neighbour keeps breaking the tenant's phone, the tenant is using his 12<sup>th</sup> cell phone now. The tenant's stove is clean, and he does not eat at home. The tenant takes opiate painkillers, which are prescribed by his doctor. The tenant lets his neighbours into his rental unit, they all love him, and they "laugh and giggle" together. There are people in the tenant's rental unit continuously, as their keys work in the tenant's locks, and the tenant's keys work in his neighbour's locks.

### Analysis

#### Credibility

Overall, I found the landlord and witness GB to be more credible witnesses than the tenant. I found them to be honest and forthright in their testimony, providing it in a candid manner. The landlord and witness GB were respectful of the tenant throughout the hearing. They did not interrupt the tenant when he was speaking, and they did not fight or argue with the tenant when he provided testimony.

Conversely, the tenant provided his testimony in an upset and agitated manner. The tenant interrupted the landlord and witness GB repeatedly and became upset when he did not like the responses given. I warned the tenant about his behaviour, but the tenant continued, despite my warnings. The tenant interrupted the landlord and witness

GB throughout their testimony, arguing with their versions of events, despite my numerous warnings to the tenant.

### Legislation

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

### Findings

On a balance of probabilities and for the reasons stated below, I find that the tenant and people permitted on the property by the tenant, significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property.

I also find that the landlord's application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect.

I find that the tenant and people permitted on the property by the tenant, caused a number of incidents resulting in significant interference and unreasonable disturbance to the landlord and other occupants at the rental property. I accept the landlord's and witness GB's documentary and testimonial evidence.

The landlord and witness GB both provided affirmed testimony, that the tenant engaged in disturbing behavior, causing health and safety risks to the landlord and the other occupants at the rental property. The fire department attended at the residential property, as a result of calls from the landlord regarding the tenant's behaviour at the rental unit. The landlord, witness GB, and the tenant agreed that there was a fire and smoke at the tenant's rental unit, which caused the fire department to be called. Although the tenant claimed that someone else caused the fire, he agreed that he wanted his smoke detectors checked, he obtained a baptism by fire certificate, someone entered his rental unit and started a fire on his stove, he had to turn the fan on and open the windows in order to clear the smoke, and he reported it to the landlord in order to call the fire department. I find that if anyone entered the tenant's rental unit during the above incidents, the tenant permitted them to do so. The tenant confirmed in his testimony, that he let other people into his rental unit.

Witness GB confirmed that the fire department was concerned about the threat that the tenant posed to the rental property. The landlord submitted staff reports and photographs of both fire incidents in the tenant's rental unit on February 27 and 28, 2021. I find that this is a safety fire hazard to the landlord's property, and a health and safety hazard to the landlord and other occupants at the rental property.

Both the landlord and witness GB have experienced and received complaints regarding the tenant's use of profane language and threats made to the landlord's staff and other occupants at the rental property, as recent as the day before this hearing on March 31, 2021.

I find that the landlord provided sufficient evidence regarding the urgency and seriousness of this situation. I accept the evidence of the landlord and witness GB, who said that the tenant's aggressive, threatening and unsafe behaviour began in November 2020 and continued to the day before this hearing, March 31, 2021. I find that the

tenant's behaviour is causing the landlord and other occupants to be fearful and unsafe at the rental property and that there is a serious fire hazard risk to the rental property.

Accordingly, the landlord's application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenant. I order the landlord to deduct \$100.00 from the tenant's security deposit of \$400.00. The remainder of the tenant's security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

### Conclusion

The landlord's application is allowed. I grant an Order of Possession to the landlord effective two (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.

I order the landlord to deduct \$100.00 from the tenant's security deposit of \$400.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: April 01, 2021

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Residential Tenancy Branch