



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, ET**

### Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and based on the testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began approximately 2 years ago. The current monthly rent is \$750.00 payable on the first of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a detached building and surrounding lot.

The parties signed a Mutual Agreement to End Tenancy in January 2021 with an end of tenancy date of March 31, 2021. The tenant submits that they signed the agreement under duress and have refused to abide by the conditions of the agreement to provide vacant possession. The tenant testified that they were pressured into signing the agreement but provided no further explanation of the circumstances of entering into the agreement.

The landlord submits that the tenant has caused considerable damage to the rental property including structural damage, ingress of mould, breaking appliances and fixtures and causing animals to run freely about the property defecating all over. In addition, the landlord testified that the tenant has allowed for bees and other insects to nest on the property which causes considerable risk to the landlord who has life-threatening allergies. The landlord says that fumigation of the building and repairs are necessary. The landlord testified that the property is at significant risk of deterioration without urgent intervention. The landlord submits that the tenant has put padlocks on the gates to the rental unit preventing access.

The landlord submitted into evidence photographs of the rental property, copies of correspondence, social media posts by the tenant stating their intention to prevent access and notices provided by the landlord of the fumigation work they intended. The social media posts also include the tenant's discussion with others about their intention to cough on the landlord to infect them with Covid.

The tenant simultaneously disputes that the rental unit is in a state of disrepair while also complaining that the landlord has failed to perform any repairs or maintenance when requested throughout the tenancy. The tenant acknowledges that they have barred access to the rental unit as they believe the work intended by the landlord including fumigation is harmful to them. The tenant testified that they were unable to submit any documentary evidence despite acknowledging that they were served with the landlord's application which included clear instructions on evidence submission.

### 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 their testimony and documentary materials, I find that the landlord has provided sufficient evidence to show that the tenant has put the landlord's property at significant risk such that an end of the tenancy and order of possession are appropriate.

I find the photographs submitted clearly show the rental property is in a state of disrepair beyond what would be expected from ordinary occupancy. I find it reasonable to attribute the damage to the rental unit and its ongoing deterioration to the tenant and their barring the landlord from accessing the property. The tenant themselves provided testimony that the rental unit has multiple deficiencies including infestation of mould and water damage.

I find the tenant's position that they barred the landlord from accessing the rental unit to perform necessary fumigation due to their concerns about the effect of the work on their health to have little merit. If the tenant had concerns about detrimental health effects they could have vacated the rental property while work was being performed. I find that the landlord's property was put at significant risk through the tenant's occupancy and poor upkeep of the rental unit which was further exacerbated by their refusal to allow the landlord to perform necessary work.

I do not find the tenant's submission that they have evidence of the ongoing adversarial relationship with the landlord which they were unable to submit to be persuasive, relevant or particularly believable. I find the tenant's position that they were unable to submit materials to not be supported in any evidence. The tenant acknowledged they were served with the landlord's materials which included a notice of hearing with clear information on how a party may submit evidence. I find the tenant's choice to make no documentary submissions does not unfairly prejudice them or result in a breach of the principles of procedural fairness.

I am satisfied with the evidence of the damage to the rental property and find that the nature of the damage caused requires timely intervention to prevent further deterioration of the property. I accept that it would be unreasonable and unfair to the landlord to allow the continuation of this tenancy to wait for a notice under section 47 to take effect.

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 \$425.00 to \$325.00.

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: April 20, 2021

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Residential Tenancy Branch