



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES - PROPERTY MANAGEMENT  
DIVISION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

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

- an early end to this tenancy based on the tenancy being frustrated and the issuance of an Order of Possession pursuant to section 56.

Both parties attended the hearing. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself.

Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and 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.

### Issues(s) to be Decided

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

### Background and Evidence

The landlord's agent gave the following testimony and submissions. This tenancy began on August 1, 2006. The rent of \$744.00 is due on the first of each month. The agent testified that her property management company was hired to manage this property in October 2019. The agent testified that she was advised by the tenants that there has been an ongoing rat infestation for many years. The agent testified that they have attempted to repair and patch access spots on the property including replacing new drainpipes and cementing around the perimeter drains.

The agent testified that they have had 24 pest control inspections and treatments since October 2020. The agent testified that the subject unit needs to be vacant so that the matter can be properly addressed. The agent relies on letters from Victoria Pest Control and Service Master Restoration that the unit must be empty, and the scope of work is unknown until drywall, floors and insulation is removed. The agent submits that the tenancy became frustrated on February 22, 2021 based on the reports of the two companies and requests an order of possession. The agent further submits that the tenant has not lived in the unit since November 2019 and has a friend house sitting for him and that this is not about evicting him to get more rent.

The advocate for the tenant gave the following submissions. The advocate submits that he is fully in agreement that the unit needs to be empty to have the rat issue properly addressed as it has been a long-standing problem. The advocate submits that the tenant has been stuck in the United States due to Covid – 19 so it would not be a hardship for him to move his belongings into storage for 60 days for the landlord to complete the work. The advocate submits once the work is done the tenant could move his belongings back in and have the tenancy continue.

### Analysis

Section 56.1 of the Act addresses the issue before me as follows:

#### **Order of possession: tenancy frustrated**

- 56.1** (1) A landlord may make an application for dispute resolution requesting
- (a) an order ending a tenancy because
    - (i) the rental unit is uninhabitable, or
    - (ii) the tenancy agreement is otherwise frustrated, and
  - (b) an order granting the landlord possession of the rental unit.

(2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession.

The tenant has been in the United States since November 2019. The tenant did not provide sufficient evidence that he intends to return. He submits that due to Covid-19 he is “stuck” there, however the tenant did not provide any testimony as to when or if he is going to return. In addition, the landlord has provided inspection reports from two separate companies both indicating that this unit is uninhabitable and a serious health risk, to which the tenant and his advocate agreed. I find that the landlord has provided sufficient evidence to meet the requirements under Section 56.1 to show that this tenancy was frustrated on February 22, 2021, accordingly; the landlord is granted an order of possession. The tenancy is terminated. I find that the landlord is entitled to a 2-day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 56.1(b) of the Act, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

The landlord is granted an order of possession.

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: May 31, 2021

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Residential Tenancy Branch