



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 27, 2021, in which the Landlord requested an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on April 29, 2021. Only the Landlord's Agent, S.D., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:50 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that they served the Tenant with the Notice of Hearing and the Application on March 30, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of April 4, 2021 and I proceeded with the hearing in their absence.

The Landlord's Agent was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Landlord's Agent confirmed his understanding of this requirement and further confirmed he was not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to an early end to this tenancy pursuant to section 56 of the *Act*?
2. Should the Landlord recover the filing fee from the Tenant?

#### Background and Evidence

The Landlord's Agent testified that the tenancy began January 15, 2021. The Agent confirmed that the Tenant rents the upper unit in a three-unit rental home. The Tenant is obligated to pay rent of \$2,200.00 per month in addition to 60% of the utilities. The Landlord's Agent stated that the since February 17, 2021 the Landlord has not received any rent payments from the Tenant.

The Landlord's Agent stated that the urgency of the request stems from the fact the Tenant refuses the Landlord entry to resolve a carbon monoxide leak from the heating system boiler. The Landlord's Agent stated that the Landlord became aware of this on March 23, 2021. The Landlord attempted to access the unit to address the issue and the Tenant refused entry and has since changed the locks denying the Landlord access

to the unit to address this issue. As there are two other units in building, the other tenants are at risk.

The Landlord filed a significant amount of documentary evidence in support of the claim before me. Much of the evidence relates to the Tenant's failure to pay rent, or communication between the parties related to other matters. When I asked the Landlord's Agent to draw my attention to the evidence which relates to the request to end this tenancy early, he drew my attention to the following:

- An email from a plumbing company dated April 12, 2021 wherein the plumber writes that the current system does not adequately vent and may have an exhaust leak.
- A text message dated March 23, 2021 which contained a screen shot of a message from the gas provider advising the Landlord to have the carbon monoxide checked.
- A work order from April 13, 2021.
- an email exchange on April 8, 2021 between the Agent to the manufacturer of the water/boiler system requesting a replacement of the system;
- a witness statement regarding the Tenant's behaviour when served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities;
- a text message from the Tenant (titled #15) wherein she indicates they intend to vacate the rental unit by April 1 and reminding the Landlord to provide 24 hours notice of any intended entry;
- a text exchange between the Tenant and the Landlord's Agent dated March 3, 2021 regarding the Tenant's failure to pay rent. In this exchange the Tenant writes that she will block any further contact.
- A text exchange between the Tenant and the Landlord's Agent dated February 3, 2021 regarding the Tenant's concerns about laundry.
- A text exchange between the Tenant and the Landlord's Agent in early February 2021 related to the Tenant's payment of rent.

The Landlord's Agent stated that the last time they had any contact with the Tenant was March 23, 2021. The Agent further stated that the Tenant has not responded to any of the Landlord's texts or calls trying to deal with this. The Agent said that he has seen the windows opened and closed such that it appears the Tenant is in the property.

## Analysis

A tenancy may be ended early pursuant to section 56 of the *Act*, which provides as follows:

### **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.

***[emphasis added in bold italics]***

This is a two-part test and the landlord must prove both parts.

In this case, the Landlord bears the burden of proving the tenancy should end early and that it would be unreasonable or unfair for the Landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. The Landlord alleged the Tenant refused entry to the rental unit to repair a carbon monoxide leak. Documentary evidence filed by the Landlord confirms this leak was brought to the Landlord's attention by the gas provider. Further documentary evidence confirms the Landlord has attempted to address this issue by hiring professionals to repair the exhaust leak.

I accept the Landlord's testimony that the Tenant has refused the Landlord entry to the rental unit, has changed the locks and is not responding to the Landlord's request to address the carbon monoxide leak. I further accept the Landlord's testimony that he leak has caused the alarm to sound repeatedly which is unreasonably disturbing others. I also find that the Tenant's refusal to allow the Landlord entry has put others occupants of the rental building at risk.

In all the circumstances I find the Landlord has met the burden of proving the Tenant has put the Landlord's property at significant risk and has seriously jeopardized the health and safety of other occupants. I also find that it would be unreasonable for the Landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. I therefore grant the Landlord's request for an early end to this tenancy.

As the Landlord's application was successful, I find they are entitled to recovery of his filing fee for the cost of his application. Pursuant to section 38 and 72 of the *Act* I authorize the Landlord to retain \$100.00 of the Tenant's security deposit. The balance of the security deposit shall be held in trust by the Landlord and dealt with in accordance with the *Act*.

Conclusion

The Landlord's application is granted. The Landlord is entitled to an Order of Possession. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

Conclusion

The Landlord's request for an early end to tenancy is granted. The Landlord may retain \$100.00 of the Tenant's security deposit as recovery of the filing fee.

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 3, 2021

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Residential Tenancy Branch