



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed their exchange of evidence.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy of a lower unit in a house started on September 15, 2019. Rent of \$850.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The Landlord’s grandparents live in the upper part of the house.

The Landlord states that on April 16, 2021 the Landlord was called about the Tenant yelling, swearing and making racial slurs about the Landlord and their family. The Landlord states that while on the way to the unit the police were called and on arrival

the Landlord recorded the Tenant on video. The Landlord states that they believe that the Tenant was also attempting to start a fire in the lower unit as the sound of a lighter clicking could be heard. The Landlord states that the Tenant has threatened to burn the place down, has made threats to kill the Landlord and their family and has directed racial slurs at the family. The Landlord states that these threats and slurs are captured on the video evidence provided by the Landlord. The Landlord states that when the police arrived the Tenant was removed in handcuffs. The Landlord states that the police informed the Landlord that the Tenant was taken for a psychiatric evaluation and was later released. The Landlord states that the police also found burned pieces of paper in the unit. The Landlord does not know whether the Tenant was charged with anything. The Landlord states that since this incident the grandparents have not spent the night at the unit. It is noted that the Landlord made this application on April 16, 2021.

The Landlord states that on April 19, 2021 the neighbour called the Landlord as the Tenant was yelling, screaming and pacing on the driveway while placing furniture on the driveway and then back and forth in the unit. The Landlord provides a witness statement from this neighbour. The Landlord states that both the neighbour and the Landlord called the police. The Landlord states that when they arrived at the unit, they parked a short distance away and observed the Tenant's behavior. The Landlord states that the Tenant appeared to be having "fits of anger". The Tenant states that 4 police officers attended the house and spoke with the Tenant eventually assisting the Tenant to return its furniture back into the unit. The Landlord states that the police informed the Landlord that the Tenant was making little sense and that the police did not understand the Tenant's behavior. The Landlord states that the Tenant was not removed from the property on this date.

The Landlord states that since the last incident they have not been present to witness any of the Tenant's behavior but that the neighbour has made a few calls to the Landlord reporting the Tenant as having fits of anger and going in and out of the unit.

The Landlord's Witness states that they were on a call with the Landlord on April 16, 2021 and heard the banging and the Tenant yelling and swearing at the Landlord to open the door. The Witness states that the Tenant has previously been aggressive towards the Witness when the Witness would knock on the Tenant's door.

The Tenant states that while the Tenant was yelling and screaming the video of this was taken out of context. The Tenant states that it was trying to fix its cabinets and that while doing this a hammer hit the Tenant in the head causing the Tenant to have a seizure. The Tenant states that all the swearing and yelling was directed at the repairs and not at the Landlord. The Tenant states that the clicking noises heard were from the cabinet doors. The Tenant states that it was looking for food when the clicking sound occurred. The Tenant states that the burned pieces of paper were from cigarette butts that were taken apart to use the leftover tobacco in other rolled cigarettes. The Tenant states that on April 19, 2021 the Tenant was putting out furniture for public pick up off the sidewalk. The Tenant states that this is a usual custom of persons living in this area.

The Tenant's advocate argues that the Landlord's evidence of the Tenant trying to start a fire is insufficient as it is impossible to assume that the clicking was from a lighter and not the cabinets. The advocate states that the evidence of the yelling does not substantiated that the yelling was directed at the Landlord and not the repairs. The Advocate argues that the threat to kill was directed at the cupboards. The Advocate argues that while the video shows what the Tenant is saying there is no evidence that the Tenant's statements were directed towards anyone or that the Tenant was talking about anyone. The Tenant argues that while the police report notes the burned pieces of paper nothing was noted to be on fire or started on fire.

The Landlord states that the clicking heard on the Landlord's video is fast and that the sound on the Tenant's video could not be from the cabinets as the video shows only the drawers getting stuck not the cabinet doors.

The Tenant states that there were no problems with the tenancy until the Tenant allowed a family member to stay in the unit for a couple of weeks during their problems with covid. The Tenant states that the Landlord and the others went crazy after that, The Tenant states that the Landlord wants the Tenant out for other reasons including the ability to raise the rent for the unit. The Tenant provides a copy of a handwritten notice from the Landlord to end the tenancy for the Landlord's use. The Tenant acknowledges that it is aware this form of notice from the Landlord is not effective to end the tenancy.

### Analysis

Section 56(2) of the Act provides that 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.

In the Landlord's video evidence, the Tenant can be very clearly heard threatening to kill "all of you" while banging and screaming in its unit. I have a difficult time accepting the Tenant's evidence that the Tenant would be directing this statement to the cabinets or their repairs. Further I consider the Landlord's video evidence to be very compelling and more supportive of the Landlord's version of events than the Tenant's version, and find on a balance of probabilities that the Tenant's anger and rage exhibited on April 16, 2021 was directed towards the Landlord and its family. Given the Landlord's evidence I also accept that the Tenant's behavior caused significant fear for the Landlord and its family. For these reasons I find that the Landlord has substantiated that the Tenant has unreasonably disturbed another occupant or the landlord of the residential property and that it would be unreasonable or unfair to the Landlord and the other occupants of the property to wait for a one-month notice to end the tenancy for cause. As a result, I find that the Landlord is entitled to an early end of the tenancy and an order of possession effective two days after its service on the Tenant.

As the Landlord's claim has met with success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee and I order the Landlord to retain this amount from the security deposit plus zero interest of \$425.00 in full satisfaction of the claim.

### Conclusion

I Order the Landlord to retain \$100.00 from the security deposit plus interest of \$900.00 in full satisfaction of the claim.

**I grant** an Order of Possession to the Landlord effective two days after its service on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 19, 2021

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Residential Tenancy Branch