



# 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* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package and the initial 11 documentary evidence files by posting it to the rental unit door on May 21, 2021. The tenant confirmed receipt of this package as claimed. Both parties also confirmed the landlord served the tenant with one additional evidence file by placing it in the tenant's mailbox. The tenant stated that the landlord was served with her submitted documentary evidence files via email on June 4, 2021. The landlord confirmed receipt of this package as claimed by the tenant. The landlord also confirmed that there were no issues in responding to the tenant's evidence as it was submitted and served late. Neither party raised any other service issues. I accept the undisputed affirmed evidence of both parties and find as there are no service issues that both parties are deemed sufficiently served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?  
Is the landlord entitled to recovery of the filing fee?

### 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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 1, 2009 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated December 10, 2008. The monthly rent was \$350.00 payable on the 1<sup>st</sup> day of each month.

The landlord seeks an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants, or the landlord. The landlord provided written details which states in part,

*Tenant has caused a flood within her unit that also flooded the unit below on Tuesday April 20, 2021. Extensive restoration work has been ongoing and both units were inhabitable. Monday May 10, 2021 at 10:30am parents caused verbal and physical confrontation which resulted in RCMP officer involvement.*  
[reproduced as written]

The landlord clarified that there are three different claims by the landlord to end the tenancy early. The landlord claims:

#1 Tenant caused a flood on April 20, 2021 which caused extraordinary damage to the rental property.

#2 Tenant caused a "Near Fire" on May 1, 2021

#3 Tenant's parents (Dad) on May 10, 2021 behaved aggressively to the landlord's agents and assaulted one.

The landlord stated that the tenant has caused extra ordinary damage to the rental property due to a flood caused by the tenant. The landlord claims that "dark water" contaminated the rental building by flooding the rental unit, the rental unit below the tenant, hallways, the lobby and other common areas on April 20, 2020. The landlord agent stated that it was determined by a plumber that no issues were noted in the building plumbing and the likely source was an excess of wipes and paper in the toilet

which caused the toilet to be clogged and then overflowed from repeated flushing. The landlord stated that the tenant had reported an issue on April 16, 2021 of the toilet not flushing properly and running all the time. The landlord dispatched a maintenance person on April 19, 2021 to the rental unit. The maintenance person reported that the tenant notified maintenance that there were no further issues. The landlord stated that the flooding was so great it went down 3 levels to the lobby from the rental unit. The landlord's witness, T.B. stated that he has over 10 years of experience and is a restoration (water) certified. The witness stated when he attended the rental unit there was no obstructions found by himself of the plumber. The witness estimates that costs for restoration work will end up costing between \$20,000.00-\$25,000.00.

The tenant disputed the landlord's claim stating that she was only responsible for 1 previous flooding. The tenant argued that the landlord has no proof of the cause but confirmed that she did call maintenance for a toilet issue and later told maintenance that there was no issue.

The landlord claims that the tenant caused a "near fire" in the rental unit on May 1, 2021. The landlord stated that the tenant began cooking fish in the oven and had left the rental building. The landlord stated that another building occupant noticed smoke and a burning food smell and had notified staff onsite. The smoke alarm was triggered. The landlord claims that this act of leaving cooking food in the oven is the tenant jeopardizing the safety of the other occupants and the landlord.

The tenant admits that this did occur, but that the fire department was not called. The tenant stated that she was still able to eat the fish. The tenant stated at this time she was under stress at home and that this was not part of her normal routine.

The landlord claims that on May 10, 2021 the tenant's parents attended the rental unit harassing the staff and had assaulted one of them. The landlord stated that the staff informed the tenant's parents that they could not discuss the tenant's issues, but that the tenant's parent (Dad) refused to give up. The landlords stated that the staff members tried to re-enter the building leaving the situation, but the tenant's parent followed them. During this the landlord stated the tenant's parent "elbowed" the staff member in the stomach. The landlord stated that the police were called and despite the victim and a witness providing supporting evidence of the assault to the police, no action was taken.

The tenant stated that she was not present for this incident but disputed that an assault had taken place and argued that no one was arrested.

## Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord's property;
  - 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
  - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, the landlord has claimed that on three different occasions prior to the landlord applying for an early end to the tenancy the tenant has:

#1 Tenant caused a flood on April 20, 2021 which caused extraordinary damage to the rental property.

#2 Tenant caused a "Near Fire" on May 1, 2021

#3 Tenant's parents (Dad) on May 10, 2021 behaved aggressively to the landlord's agents and assaulted one.

The landlord has provided clear details of each of the above noted incidents. In each case the tenant is argued to have caused extraordinary damage flooding the rental unit and building; causing a “near fire” and claiming that the tenant’s parent had assaulted a staff member. The tenant has confirmed that a flood took place but has argued that the landlord has failed to provide evidence of the source of flooding. The tenant has admitted that she was cooking fish in the oven and left it unattended by leaving the building; and the argued that despite not being present dispute the landlord’s claim of an assault. In reviewing all of the submissions and evidence presented by both parties, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. In this case, the landlord provided clear details of the circumstances of each incident and how the tenant has caused extraordinary damage to the rental building due to the “dark water” flooding. I accept the landlord’s witness testimony that a restoration company was retained and a plumber had determined that there was no plumbing issues and was likely caused “in his opinion” due to an over flow of water from the toilet caused by repeated flushing. I also find that despite the police taking no action regarding an assault I find that the landlord’s evidence to be credible in that the tenant’s parent was trying to discuss the tenant’s situation with the landlord’s agents and refused to give up by pursuing the staff members and “assaulting” the worker. I find that although there is no evidence of injuries no party, landlord or tenant should be threatened/assaulted by physical violence. For these reasons I find that the landlord has provided sufficient evidence to satisfy me that the tenant or a person permitted on the property by the tenant poses an immediate and sever risk to the rental property, other occupants or the landlord. The landlord’s application is granted an order of possession to be effective two days after it is served upon the tenant.

The landlord is entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: June 10, 2021