



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes    **ET, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. The landlord confirmed he was not recording the hearing.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 38 minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants was provided.

The tenant testified as to the background of this application is as follows:

- The landlord's application was the subject of a Decision dated April 27, 2021 in which the Arbitrator granted the application and issued an Order of Possession. The tenants did not attend. The Arbitrator found that the landlord had served the tenants in compliance with the Act.
- The tenants applied for a Review of the Decision. On May 10, the Arbitrator hearing the application for Review granted a new hearing on the basis that the tenant was unable to attend, stating:



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*I find there is a question as to whether the tenants were duly served with notification of the proceeding and thus, did not have the opportunity to provide their response which appears to a contradiction to the landlord's position.*

- The Arbitrator directed as follows:

*I order that a new hearing of the original application take place. The decision and order(s) issued on April 27, 2021 are suspended until that hearing is completed.*

***Notices of the time and date of the hearing are included with this Review Consideration Decision for the tenant to serve to the landlord within 3 days of receipt of this Decision. The tenant must also serve a copy of this Decision to the landlord.***

***Since the Tenant claims that they did not receive the original hearing documents and evidence of the landlord, I order the landlord to serve the Tenant with their application for dispute resolution and evidence within 3 days of the date of receiving this Review Consideration Decision.***

*Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing.*

*Preliminary Issue 1 – Service of Notice of Hearing and Application for Dispute Resolution*

The landlord provided affirmed testimony that he served the tenants with the Notice of Hearing and Evidentiary package by posting to their door on May 11, 2021.

The landlord testified that he had not received any documents from the tenants.



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The landlord provided his email address in the Application and the tenants' email address in the hearing. He also confirmed his understanding that the Decision would be emailed to both parties and any Orders sent to the appropriate Party.

The landlord testified that the tenants were served with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

The landlord explained that the tenant was served on May 11, 2021 when the documents were posted to the tenants' door. Pursuant to section 90, service is deemed effective three days later, that is, on May 14, 2021.

In consideration of the undisputed testimony of the landlord, I find the landlord served the tenants as required on May 14, 2021.

## Issue(s) to be Decided

Is the landlord entitled to the relief requested?

## Background and Evidence

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The landlord confirmed the details of the tenancy agreement and testified as follows. The fixed-term tenancy started on February 1, 2020. On July 31, 2020 the tenancy continued on a month-to-month basis. Monthly rent is \$1,500.00, due on the first day of each month. The tenants paid the landlord a security deposit of \$750.00, and no pet damage deposit. The landlord testified that the tenants are in arrears of rent more than \$15,000.00.

The unit is a basement suite and the landlord lives upstairs with his family.

The landlord said that the tenants have not let him in to inspect the rental unit for a year. In February 2021, when he was standing at the door talking to them, he noticed that they had disconnected the smoke detector.



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The landlord submitted a photograph of cut wires emerging from a hole in the wall of the unit where the smoke detector should be. The landlord said that the reason he seeks an early termination of the tenancy and an Order of Possession is because the tenants smoke heavily in the rental unit and yet they removed the smoke detector. The landlord stated that the smoke smell from the unit pervades the entire building including his home upstairs. The landlord has asked them to reinstall the smoke detector and posted a notice; the tenants have not complied.

The landlord also said that the tenants changed the locks many months ago without informing him and did not give him a key to the rental unit. He said that if there is an emergency, that he cannot get in to help the situation.

The landlord testified that the police have been called to the unit because of domestic violence between the tenants. The landlord testified that twice the police have come to the unit and taken the male tenant away. The landlord provided the police report number for the second apprehension which occurred June 9, 2021.



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The landlord said that these factors make the situation dangerous, and as a result, he needs to get these tenants out as soon as possible and have access to the rental unit. He said the danger in this situation makes it necessary for an early termination of the tenancy. He said that given the inherent risk of this situation, that he cannot wait for a One Month Notice to be served and requested an Order of Possession.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

An application for an early end to tenancy is an exceptional measure. To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice").

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 wellbeing 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.

These reasons are based on Section 56 which states as follows:

**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.*

The landlord relied primarily on section 56(2)(a)(i), (ii) and (iii) that is:

1. *the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
2. *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
3. *put the landlord's property at significant risk;*

*Policy Guideline 51 – Expedited Hearing* provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

*Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.*

*The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

The landlord gave forthright, credible evidence supported by a photograph of the removed fire alarm. I have given significant weight to the evidence of the landlord. The landlord was believable in describing the smoking of the tenants, the provision of a written warning, their failure to comply, and the attendance of the police at the unit.

I find that the landlord has provided sufficient evidence to show that the tenant has *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 interest of the landlord or another occupant and put the landlord's property at significant risk.*

Considering the testimony and evidence, I accordingly find that the landlord has met the burden of proof for the reasons relied upon and for which credible, sufficient evidence was submitted.

I find that the landlord provided enough evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented

by the landlord demonstrated a significant risk of fire and violence between the tenants requiring police presence.

On a balance of probabilities and for the reasons stated above, I find that the landlord's application meets the burden of proof and satisfies all requirements under section 56 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety and procedural measures going forward.

#### Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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

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