



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on June 1, 2021 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on June 18, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not.

The landlord stated that they delivered notice of this dispute resolution in person on June 12, 2021. They provided a special ‘Proof of Service’ document that gives the detail that a neighbour witnessed the transaction. That same witness signed the form to indicate the same.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the *Act*.

The tenants did not attend the hearing and did not provide any documentary evidence in advance.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by s. 56 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

I have reviewed all oral testimony and documentary evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause.

The landlord confirmed there was a tenancy agreement in place. They provided a copy of it for this hearing. The tenant moved into the unit for the tenancy starting on April 1, 2021. The rent amount was \$800 per month. They initially paid a security deposit of \$400.

The tenant stopped paying rent in May 2020 and the landlord served a formal notice to end the tenancy in May, giving 2 months' notice. The tenant at one point informed the landlord they would move at the end of June.

The landlord and another family member smelled smoke one day, so that family member entered the unit and saw all four stove burners on full. There was also a knife attached to the ceiling. The tenant, who was present, refused to turn off all four elements and challenged the landlord's family member to a fight. For this, the fire department and the police attended.

The landlord and their family member who attended the hearing state there are children upstairs, and there is "a lot of danger" because of this tenant. At one point the police informed the landlord that the tenant has a criminal record, and the police had to transfer the tenant to the hospital for mental health concerns.

On June 15, the landlord smelled smoke again. When they inquired to the tenant, the tenant responded to say they were taking a shower. Because there is the proviso in the tenancy agreement of no smoking in the unit, the landlord suspects the tenant had disabled the smoke alarm in the rental unit which increases the risk of a serious situation.

In their evidence, the landlord provided photos and videos that show the extent of damage in the unit because of the stove. Pictures also show the dishevelled state of the rental unit, with garbage and disorganization throughout. The landlord described this as "hoarding."

## Analysis

The *Act* s. 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads 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 tenancy were given under section 47 [*landlord' notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

There are two criteria set in s. 56(2). First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

56(2) . . .

- (a) The tenant or a person permitted on the residential property by the tenant has done any of the following:
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord' property at significant risk;
  - . . .
  - (v) caused extraordinary damage to the residential property. . .

I have considered the evidence of the landlord concerning the evidence of the state of the unit.

I find there is sufficient evidence to show the tenant is the source of legitimate concern over significant risk to the property and the health and safety of the landlord and their family members. This is specified by s. 56(a)(ii) and (iii) above. The evidence presented by the landlord shows this risk.

First, from the evidence I am satisfied that the facts of the situation prove cause. Secondly, I find it unfair for the landlord to wait for a set-period notice to end tenancy to take effect. The evidence established by the landlord shows they previously served a notice that the tenant did not dispute. It is not known whether the tenant will abide by the set move-out date specified on that notices that was duly served in accordance with the *Act*.

In sum, I find what the landlord presents merits an expedited end to the tenancy. I so grant an Order of Possession in line with this rationale.

As the landlord were successful in this application, I find they are is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

For the reasons above, I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to s.72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100, for recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 s. 9.1(1) of the *Act*.

Dated: June 21, 2021

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Residential Tenancy Branch