



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: ET FFL

### **Introduction**

The landlord seeks an order ending a tenancy early and an order of possession, pursuant to section 56 of the *Residential Tenancy Act* ("Act"). In addition, the landlord requests recovery of the filing fee under section 72 of the Act.

The landlord attended the hearing, while the tenant did not. The landlord had a witness on standby. The landlord gave evidence, under oath, that they served the Notice of Dispute Resolution Proceeding by posting it on the door of the rental unit on October 27, 2021. The landlord's witness observed this service.

Due to the exceptional circumstances of the case, it is my finding that an extension of the time limit required in which the landlord was to serve the Notice of Dispute Resolution Proceeding (October 22, 2021) is both acceptable and permitted. (See section 66(1) of the Act.) In summary, based on this undisputed evidence it is my finding that the landlord served the tenant with the Notice of Dispute Resolution Proceeding in compliance with section 89(2)(d) of the Act.

### **Issues**

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recover the cost of the filing fee?

### **Background and Evidence**

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on September 15, 2021. Monthly rent is \$1,500.00 and the tenants paid a \$750.00 security deposit. The security deposit is currently held in

trust by the landlord pending the outcome of this application. A copy of the written *Residential Tenancy Agreement* was in evidence, and it is signed by the two tenants. The two tenants were a husband and a wife.

On October 18, four weeks after the tenancy began, the wife killed her husband. The wife (the tenant respondent named in this application) was arrested by RCMP and later released. Charges have not been laid, and the police have submitted a report to Crown counsel. The tenant was subsequently apprehended under *The Mental Health Act* and is currently, to the landlord's knowledge, in the psychiatric ward of the hospital.

The landlord resides in the upper floor portion of the two-level residential property, and the tenants occupied the lower, or basement, portion of the home. Because of the proximity of where the homicide took place the landlord is afraid for her safety. The landlord testified that the tenant is (mentally) unstable, "killed her husband of thirty years," and "I fear for my safety."

Submitted into evidence, along with a copy of the tenancy agreement as noted above, was a copy of the landlord's Application for Dispute Resolution, a search warrant, and photographs of the exterior of the rental unit with yellow police tape surrounding it.

### Analysis

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

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.

For me to consider granting orders under section 56(1) of the Act, I must be satisfied, on a balance of probabilities, that the evidence supports a finding of fact that (set out in section 56(2) of the Act) one or more of the following occurred:

- (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

And, if any of the previous applies, that 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 to take effect (section 56(2)(b) of the Act).

In this case, the oral and documentary evidence persuades me to find that the tenant, through the act of killing her husband in the rental unit, has significantly interfered with and unreasonably disturbed another occupant (the deceased tenant) and the landlord of the residential property, and, she has seriously jeopardized the health and safety of the landlord or another occupant (again, the now-deceased tenant). Last, it goes without saying that it would be wholly unreasonable and unfair to the landlord – who resides in the upper level of the house above the lower-level rental unit – to have to wait for a One Month Notice to End Tenancy for Cause to take effect.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their application.

Pursuant to section 56(1)(a) of the Act, it is hereby ordered that the tenancy is ended, effective immediately. And, pursuant to section 56(1)(b) of the Act, the landlord is granted an order of possession of the rental. A copy of the order of possession is issued in conjunction with this decision, to the landlord. As briefly explained in the hearing, the landlord must serve a copy of the order of possession by any means permitted under [section 88](#) of the Act.

Last, in respect of the claim for recovery of the cost of the filing fee, section 72 of the Act permits an arbitrator to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in her application, I award her \$100.00 in compensation to cover the cost of the filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” Having ordered this tenancy to end, the landlord is authorized to retain \$100.00 of the tenants’ security deposit in satisfaction of the above-noted award.

The landlord may review [Part 5](#) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, on dealing with the tenant’s abandoned property.

### Conclusion

**The application is granted in its entirety.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 5, 2021

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Residential Tenancy Branch