



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0889366 BC LTD, 0889366 BC LTD 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; and

authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. Agent ZM primarily spoke on behalf of the two agents (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the materials for this hearing and have not served any evidence of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an early end of the tenancy and Order of Possession?  
Is the landlord entitled to recover their filing fee from the tenant?

## 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in 2009 and was assumed by the landlord in 2010 when they purchased the property. The rental unit is a suite in a multi-unit building of 12 units. The current monthly rent is \$584.82 payable on the first of each month. A security deposit of \$272.50 is held by the landlord.

There was flooding in the rental property in November 2021 caused by excess rainfall and the municipal system being unable to handle the rising water levels. The rental property experienced some damage due to the floods.

The landlord arranged for third-party restoration companies to inspect the damage and intended to proceed with remediation and repairs. The landlord submits that they have been informed that the tenant needs to vacate the rental unit in order to commence repairs. The landlord submitted into evidence correspondence from the third-party restoration company which states:

In order to properly remediate the water damage (including asbestos abatement), we will require the tenant in [the unit to] vacate his unit. We will need his contents removed from the storage room and unit as well.

Not only will the water damage, if left un treated, cause microbial and fungal damage to the structure of the property but we will also need to contain the common hallway area directly in front of his only means of entry/exit to his unit as well as a portion of the unit itself in order to complete the required asbestos abatement activities. At this time, due to the surge in water damage claims, we are unable to provide a timeline for the repairs to be completed but it would be in the best interest of the property to get started as soon as possible to prevent secondary damages.

The tenant agreed that some repairs to the rental unit are appropriate but feels the degree and extent of the work suggested is disproportionate to the actual damage to the building. The tenant also submits that they have not been given a timeline for repairs so they have no information on how long they will need to be vacant from the suite or what alternate accommodations are necessary.

The landlord says that the tenant's failure to vacate the rental unit to provide access for repairs and remediation puts the property at significant risk and jeopardizes the health and safety of the other occupants of the building. The landlord submitted into evidence some correspondence from other occupants of the building raising concerns for their own safety and the condition of the building.

The parties testified that the landlord has issued a 1 Month Notice to End Tenancy for Cause dated November 17, 2021 for the same reasons. The landlord submits that they have filed an application for early end of the tenancy as they believe that the tenant's continued occupation of the rental unit and failure to allow work makes it unfair and unreasonable to wait for a 1 Month Notice to take effect.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order 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 well-being 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, **and**

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the totality of the evidence before me, including the testimonies of the parties and documentary materials, I find that the landlord has not provided sufficient evidence to show that the tenant has seriously jeopardized the health or safety of the other occupants or put the property at significant risk such that an early end of the tenancy is appropriate and reasonable.

While I accept the undisputed evidence of the parties that there has been some damage to the property due to the flooding and remediation is advisable, I find the correspondence from the third-party company to be vague, alluding to potential further damage to the property but without details, timelines or consequences. Microbial and fungal damage is mentioned but there is no further explanation of the consequences of such damage or the risks it may pose to occupants of the building.

I find the correspondence from other residents of the property to be of little probative value as they simply demonstrate subjective concerns. The landlord gave testimony that structural remediation is outside of their area of expertise and they are relying upon the opinion of third-party experts.

I find the evidence before me to be insufficient to demonstrate that there is any jeopardy to the health and safety of others or risk to the property, or that it is so palpable and imminent that it would be unfair and unreasonable to wait for a notice to end tenancy to take effect. Consequently, I dismiss the present application.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: December 23, 2021

---

Residential Tenancy Branch