



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EWALD RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on June 23, 2022 seeking an order for the early termination of the tenancy. This is an expedited hearing process, filed by the Landlord on an emergency status, on the basis that the Tenant poses an immediate and severe risk to the property, other occupants, or the Landlord. The Landlord also 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 August 2, 2022. 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 attend.

### Preliminary Matter

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of this hearing. This means the Landlord must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the Landlord described their service of the key document that is the Notice to the Tenant at their current address (i.e., the rental unit) by attaching a copy to the door on July 19, 2022, the same day they received it from the Residential Tenancy Branch. The Landlord was the witness to an agent who completed that action, as provided for in the “Proof of Service – Notice of Expedited Hearing” that the Landlord

provided in their evidence. After this, the Landlord did not hear anything in reply or further with respect to the tenancy from the Tenant.

I accept the Landlord's evidence that they served the Notice, including their evidence, to the Tenant at the rental unit address. This is sufficient for the purposes of the *Act*. Based on the submissions of the Landlord, I accept they served notice of this hearing and their evidence in a manner complying with s. 89(1)(d) of the *Act*, and the hearing proceeded in the Tenant's absence.

#### 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

The Landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was December 1, 2021. The Tenant was to pay \$1,695 at the start of each month. Both the Landlord and Tenant signed the agreement on November 24, 2021.

The Landlord provided their account of how they feel the conduct of the Tenant is sufficient reason to end the tenancy in an expedited fashion. This is from the concerns of other building residents who report to the Landlord on the following:

- Noise/disruption throughout the night
- Tampering with the main door to the rental unit building to allow others entry for access to the Tenant's rental unit
- Theft of personal items from the laundry room
- An odour emitting from the rental unit
- Entry of others via the Tenant's patio door.

The Landlord in the hearing also set out their own observations with the rental unit and their experience with the Tenant. This was based on two rental unit inspections in June.

On their second visit with proper notification to the Tenant, they entered the rental unit, and this visit is the source of the pictures the Landlord provided in their evidence. The Landlord relayed their concerns about what they found to police who advised of the seriousness of the Landlord's observations. The Landlord referred to their photos in the evidence for detail.

The Landlord also noted costly damage to the property, particularly the rental unit when the Tenant had to break their own rental unit door in order to enter without a key. In a written account, the Landlord referred to an extreme mess in the rental unit, as well as damage to the hardwood floor.

In the interim, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the Tenant for unpaid rent in recent months. In the hearing the Landlord advised that the validity of this notice is the subject of an upcoming review. The Tenant applied to cancel this notice, and the hearing is scheduled in the future.

### Analysis

The *Act* s. 56 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's notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.

Following this, s. 56(2) sets out two criteria. First, a landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to a landlord to wait for a set-period Notice to End Tenancy to take effect under the different s.47 of the *Act*. The determination of cause considers the following situations of immediate and severe risk is set out in s. 56(2):

- (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 . . .

I have considered the evidence of the Landlord here concerning the conduct of the Tenant. I note the *Act* s. 56 is reserved for situations where a tenant commits a serious breach.

I find there is sufficient evidence to show the Tenant is the source of legitimate concern over the quiet enjoyment, security, safety, or physical well-being of other building occupants of the residential property. This is as set out in s. 56(2)(a)(iv) above. The chief evidence here is the paraphernalia and substances that the Landlord discovered in their rental unit inspection, linked to the visiting at all hours, aggravated noise, and jeopardized security of the main entrance at the residential property. This has affected the other residents' quiet enjoyment and led to concerns for their own safety and security.

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. 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 was successful in this Application, I find they are entitled to recover the \$100 filing fee paid for this Application. I grant the Landlord a monetary order for this amount.

### 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 for the recovery of the filing fee paid for this 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: August 2, 2022

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Residential Tenancy Branch