



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITY OF KAMLOOPS  
and[tenant name suppressed  
to protect privacy]

## **DECISION**

Dispute Codes     ET

### 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

The lawyers and agents named on the first page attended for the landlord (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant 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 tenant was provided.

### Service upon Tenant

As the tenant did not attend the hearing, the issue of service was addressed.

The landlord stated the tenant was served on September 14, 2022 with the Notice of Hearing and evidence package by posting to the tenant's door by the agent LC who attended the hearing. A completed Proof of Service in the RTB form was submitted.

I accept the landlord's evidence as supported by the Proof of Service and find the landlord served the tenant in compliance with the Act effective 3 days after posting, September 17, 2022.

#### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

#### Background and Evidence

The landlord provided substantial comprehensive evidence. The evidence is uncontradicted as the tenant did not attend the hearing. Not all this evidence is referenced in the Decision. Only key, relevant and admissible evidence in support of my findings and conclusions is referenced.

The landlord stated the unit is in a building with 60 rental units and historically housed low-income tenants some of whom suffer with mental health issues.

This is an Application for Dispute Resolution by the landlord to obtain an Order of Possession for the unit rented to the tenant. The landlord requested that the Order be effective today, so that the landlord may proceed with the necessary demolition of the building consistent with the landlord's Demolition Notice.

#### *Tenancy*

The landlord submitted a copy of the tenancy agreement. The tenancy began on March 1, 2021. Monthly rent payable on the first is \$905.00. The tenant provided a security deposit of \$450.00 and a pet deposit of \$450.00 at the beginning of the tenancy which the landlord holds.

#### *4 Month Notice*

The landlord issued a 4 Month Notice dated and personally served on May 25, 2022. A copy of the Notice was submitted which is in the standard RTB form. The effective date of the Notice is September 30, 2022.

The Notice stated the landlord has “obtained all permits and approvals required by law to do this work” and listed an issued Demolition Permit dated May 2, 2022.

The Planned Work is described in the Notice:

The landlord Intends to sell the land and building for redevelopment with a mix of commercial and residential units consistent with the North Shore Neighborhood Plan. The former nightclub at the rear of the building will be demolished to accommodate future parking. The existing rental units will be completely gutted along with the nightclub fronting Tranquille Rd. Depending on the structural integrity of the building and the new Purchasers redevelopment plans, the entire building may be demolished.

Details of the work are described in the Notice:

Once vacant and utilities (hydro, gas, municipal services) disconnected, hazardous building material removal will begin. Once completed, complete structural demolition of the rental unit will occur. Exterior skin of the building will be removed. The structural integrity of the support columns and floor slabs, along with the compatibility of the new development, will determine if the entire building frame is demolished.

The tenant did not dispute the Notice.

### *Other Proceedings*

The tenant has brought a separate Application for Dispute Resolution related to the same tenancy, the number of which is referenced on the first page. The hearing is scheduled for November 22, 2022.

### *Landlord's Submissions*

The landlord submitted the following documents in support of the application:

1. Appendix A
2. David Freeman, sworn Affidavit
3. Danielle Charles, sworn Affidavit

The landlord stated that all other tenants in the building vacated the building by or about September 30, 2022.

The expedited hearing was necessary due to urgency regarding the financial burden imposed on the landlord to maintain this deteriorated 60-unit property past September 30, 2022, for the benefit of a single tenant.

The landlord submitted as follows:

1. The building is impacted by severe exterior and interior structural deterioration and defects. Along with the age of the building, the deterioration and defects have resulted in further problems such as but not limited to:
  - Extreme water damage and leaking from a damaged roof membrane;
  - Mold accumulation from uncontrolled moisture and leaking;
  - Deterioration of old sewer piping resulting in breakage and sewer accumulation beneath the building;

- Ground deterioration beneath the Property due to sewer and water leaks;
  - Electrical problems;
  - Asbestos; and
  - Lead paint in the rental units.
2. The landlord and property manager have encountered difficulty in hiring contractors to deal with the building's structural deterioration and defects. Contractors refuse to enter the building to complete work due to aggressive or distressing behaviour of occupants as well as the presence of bed bugs in the building.
3. After the landlord purchased the property, further and ongoing damage was caused by tenants and/or occupants including:
- Flushing food and objects down toilets which damage and clog the plumbing;
  - Human excrement in bathtub, shower and sink drains which damage and clog plumbing;
  - Fixtures such as sinks, fridges, lights and shelves being ripped from walls causing damage to the rental unit's structure;
  - Electrical being pulled out from ceilings and walls; and
  - Ceilings and walls being torn down and damaged due to inappropriate tenant activity.
4. The landlord obtained a commercial demolition permit to demolish the building on May 4, 2022.

5. All building occupants were served with a 4 Month Notice on May 25, 2022, including the tenant as stated earlier.
6. Since then, building occupants have been relocated or have vacated except for the tenant.
7. In the separate proceedings, the tenant requested repair of his unit which is not an option given the condition of the building.
8. Maintaining the building is a significant cost to the landlord and are estimated to be \$222,000.00 annually. Expenses include:
  - a. Interest payments on the mortgage;
  - b. Periodic repair and maintenance work;
  - c. Property insurance;
  - d. Utilities; and
  - e. Property taxes.
9. There are also additional costs associated with the building as deterioration and vandalism continue.
10. The landlord will lose many thousands of dollars if the building must be maintained for the benefit of the tenant.
11. Any monetary claims of the tenant are scheduled for an upcoming hearing and can be dealt with at that time.

The landlord stated the tenant still lives in the unit.

In summary, the landlord requested an immediate end to the tenancy and an Order of Possession.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

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.

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 section states:

#### ***Application for order ending tenancy early***

***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.*

Expedited hearings are for serious matters; they are scheduled on short timelines and on short notice to the respondent.

*Policy Guideline 51 – Expedited Hearings* provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.

The Guideline states in part as follows:

*Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.*

*...*

*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).*

*Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications.*

*Examples include:*

- *A witness statement describing violent acts committed by a tenant against a landlord;*



- *Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;*
- *Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or*
- *Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.*

To grant an Order of Possession under section 56(1), I must be satisfied as follows:

56 (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.

(emphasis added in bold)

The landlord relied on sections (a)(i). That is, the tenant had:

*(i) **significantly** interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*

I find the landlord provided credible testimony and sufficient supporting evidence. The evidence was well prepared, comprehensive and convincing. I accept the landlord's uncontradicted evidence in its entirety. After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has met the burden of proof of circumstances described in section 56(2)(a)(i) and is entitled to an Order of Possession.

I find the building is being demolished for good reason given the serious nature of deterioration and ongoing vandalism. I find the building is unfit for habitation. I find the tenant was properly served with a 4 Month Notice on May 25, 2022 and has not applied to dispute the Notice. I find the tenant has nevertheless refused to move out and has brought an application which includes a request for a financial award and repairs. I find the tenant's refusal to move out is causing significant financial and other obligations for the landlord which are unreasonable and unfair. These expenses include expected costs of the postponement of demolition as testified, as well as untold costs of responsibility for a building which is not suitable for occupation yet nevertheless occupied by the tenant.

I accept the landlord's evidence that demolishing the building is an urgent matter in the circumstances.

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

*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.*

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the circumstances described above including the condition of the building and ongoing vandalism.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order 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.

#### *Landlord's Application to Dismiss*

The landlord's application to dismiss the tenant's claims in the separate Application for Dispute Resolution referenced on the first page is dismissed without leave to reapply.

As stated in *Policy Guideline 51 – Expedited Hearing*:

An application for an expedited hearing cannot be combined with another claim, such as a request for monetary compensation (except a request for repayment of the filing fee).

#### *Order of Possession*

*Policy Guideline 54 – Ending a Tenancy: Orders of Possession* states:

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

Considering the totality of the evidence, I direct that the effective date of the Order of Possession is today's date. The Order of Possession is effective immediately upon service.

### Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **immediately upon service**. 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: October 07, 2022

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Residential Tenancy Branch