



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPT FFT**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant seeks:

- an Order of Possession for the rental unit pursuant to section 54 of the Act; and
- authorization to recover the filing fee for the Application from the Landlords.

Two agents (“FC” and “RA”), the Tenant and the Tenant’s advocate (“RC”) attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

RC stated the Tenant served the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) on the Landlords by email on December 22, 2022 and by registered mail on December 23, 2022. The RC acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlords in accordance with the provisions of sections 88 and 89 of the Act and section 43 of the *Residential Tenancy Regulations* (“Regulations”).

FC stated the Landlords served the Tenant with its evidence by email on January 6, 2022. Although there was no evidence the Tenant consented to service of documents by the Landlord, RC stated the Tenant received the Landlords’ evidence and had reviewed it. As such, I find the Tenant was sufficiently served with the Landlords’ evidence pursuant to section 71(2)(b) of the Act.

### Issues to be Decided

Is the Tenant entitled to:

- an Order of Possession for the rental unit?
- recovery of the filing fee for the Application from the Landlords?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

Both parties submitted a signed copy of the tenancy agreement dated February 28, 2022 ("Tenancy Agreement") between one of the two corporate Landlords ("MH"), the Tenant and a co-tenant ("DT"). The Tenancy Agreement states the tenancy commenced on March 1, 2022, for a fixed term ending March 1, 2023, with rent of \$1,300.00 payable on the 1<sup>st</sup> day of each month. The Tenant and DT were required to pay a security deposit of \$650.00 and a pet damage deposit of \$50.00 by March 1, 2022. FC stated the Tenant has not paid rent for December 2022 and January 2023. RC stated the rent is paid by auto-withdrawal and the money was available for payment of the rent. RC stated the Landlords chose not to withdraw the rent for December 2022 and January 2023. RC admitted the Landlords have not obtained an Order of Possession from the RTB. RC admitted the Landlords did not receive notice from either the Tenant or DT to end the tenancy. Based on the foregoing, I find there was a residential tenancy between MH, the Tenant and DT and that I have jurisdiction to hear the Application. FC stated the Landlords have not re-rented the rental unit.

The Tenant stated the security and pet damage deposits were paid to MY. FC stated he did not know if the security and pet damage deposits were paid. As it is not relevant for the purposes of making a decision on the issues that arise from the Application, I do not make a finding of whether the security and pet damage deposits were paid by the Tenant and DT.

FC stated a person firebombed the rental unit on November 22, 2022. FC submitted into evidence a video recording that showed a male person taking a bottle and throwing it. The video then shows the person lighting a rag and throwing it. The video does not show where the bottle and burning rag were thrown. FC stated the firebomb broke a

window to the rental unit causing a fire. FC stated the fire department attended to put the fire out and the police were called. FC stated the firemen broke the lock on the entry door to the rental unit in order to gain access. FC admitted the Landlords could not identify the person in the video recording and the Landlords believed the person who caused the fire was DT. FC stated the Landlords were later informed the person was the Tenant's brother ("WD"). FC stated the Landlords did not know who had keys to access the residential property and the rental unit. FC stated the police recommended the Landlords change the locks to the rental unit. FC stated the Landlords had the locks replaced with a different key and he believed the strata council changed the keys for the doors to gain access to the residential property. FC stated the Landlords gave the Tenant access to the rental unit on several occasions so that he could retrieve some of his personal property. The Tenant stated he believed he was permitted to go into the rental unit on four occasions.

FC admitted the Landlords made an application for dispute resolution ("Previous Application") with the Residential Tenancy Branch ("RTB") to seek an early end of the tenancy pursuant to section 56 of the Act. The arbitrator who heard the Previous Application found the Landlord did not comply with the requirements of section 89 of the Act for service of the Notice of Dispute Resolution Proceeding for the Previous Application and that the Notice was not served on the Tenant. As a result, the Previous Application was dismissed with leave to reapply. FC admitted the Landlords did not make another application for dispute resolution to seek an early end to the tenancy.

FC admitted the Landlords did not seek any orders or injunctions from the BC Supreme Court prohibiting the Tenant from returning to the property. FC stated the other residents of the residential property did not want the Tenant to be allowed back into the premises.

The Tenant stated he informed the Landlords before they made the Previous Application that it was neither he nor DT that firebombed his rental unit. The Tenant stated he told the Landlords it was WD and that there was a no contact and no go order against WD.

RC stated she sent an email on December 22, 2022 to which were attached copies of two restraining Orders of the BC Provincial Court. The first Order ("First Order"), dated October 27, 2022, stated, among other things, that WD:

- was to have no contact or communications, directly or indirectly, with the Tenant
- must not go to any place where the Tenant lives, works, attends school, worships, or happens to be. If you see them you must leave their presence immediately without any words or gestures
- must not go to [address of the residential premises in which Tenant resides] with one exception that allowed WD to go to the rental unit to get his belongings and only in the presence of a peace officer

The second order ("Second Order"), dated November 21, 2022 stated, among other things, that WD was not:

- to have no contact or communications, directly or indirectly, with the Tenant
- possess any incendiary device, flammable product or explosive substances
- to go to or be within a two-block radius of the residential premises

RC submitted into evidence copies of the First and Second Email. RC and a copy of the email dated December 22, 2022 to the Landlords to corroborate her testimony.

RC stated WD did not live in the rental unit at the time of the firebombing or any other time. RC stated the Tenant was initially prevented from access to the rental unit to retrieve critical medications but was subsequently given access on several occasions. RC stated the Tenant has multiple disabilities. RC stated that, as result of the Landlords illegal actions, there has been a massive impact o the Tenant's physical and mental health.

FC stated the firebombing had severe consequences for the other residents of the residential property as well. RC stated that, prior to the firebombing, the other residents have been disturbed by arguments and disputes in the rental unit. FC did not submit any evidence to corroborate this testimony.

### Analysis

Section 54(1) of the Act states:

- 54(1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

- (2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.
- (3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

FC stated a person firebombed the rental unit on November 22, 2022 and provided a video recording of the incident. FC stated the firebomb broke a window to the rental unit causing a fire. FC stated the firemen broke the lock on the entry door to the rental unit in order to gain access. FC admitted the Landlords could not identify the person in the video recording and the Landlords believed the person who caused the fire was DT. FC stated the police recommended the Landlords change the locks to the rental unit. FC stated the Landlord replaced the lock to the rental unit with a different key and he believed the strata council changed the keys for the doors to gain access to the residential property. FC stated the Landlords gave the Tenant access to the rental unit on several occasions so that he could retrieve some of his personal property. FC did not provide any evidence that WD lived in the rental unit at the time of the firebombing or at any other time.

The Landlords made the Previous Application that was dismissed on the basis the Landlords did not service it in accordance with the provisions of section 89 of the Act. FC acknowledged the Landlords did not make a new application for dispute resolution to seek an early end of the tenancy. FC stated the Landlords did not seek any orders or injunctions from the BC Supreme Court prohibiting the Tenant from returning to the rental unit or residential property. FC stated the other residents of the residential property did not want the Tenant to be allowed back into the premises.

The Tenant stated he informed the Landlords, before they made the Previous Application, that it was neither he nor DT that firebombed his rental unit. The Tenant stated he told the Landlords it was WD and that there was a no contact and no go order against WD. RC stated she sent the First Order on the Landlord by email on dated October 27, 2022. The First Order stated WD was not to go to the residential premises in which the rental unit is located. except for once to retrieve his belongings in the presence of a peace officer. The Second Order stated WD was not to go to or be within a two-block radius of the residential premises

RC stated the Tenant was initially prevented from accessing to the rental unit to retrieve critical medications but was subsequently given temporary access on several occasions. RC stated that, as result of the Landlords locking the Tenant out of the rental unit, it has had a massive impact on the Tenant's physical and mental health.

RC admitted the Tenants did not give notice to the Landlords that they were ending the tenancy. RC admitted the Landlords did not obtain an Order of Possession requiring the Tenant and DT to vacate the rental unit. I find the Landlords failed to perform adequate due diligence investigations before they took the precipitous step of locking the Tenant out of the rental unit, all without lawful authority from the RTB or the BC Supreme Court. A landlord must give proper written notice on one of the prescribed forms issued by the RTB, to end to a tenancy or, alternatively make an application for dispute resolution for an early end to tenancy pursuant to section 56 of the Act and obtain an Order of Possession before the landlord may take lawful steps to enforce the Order of Possession. The Landlords made the Previous Application that was dismissed because the Landlords failed to properly serve the Notice of Dispute Resolution Proceeding on the Tenant by a method permitted by the Act. As the Landlords made the Original Application, they knew, or ought to have known, they required an Order of Possession from the RTB. Instead of making a new application, the Landlords left the Tenant homeless, presumably hoping the problem would go away. The Landlords severely breached the rights of the Tenant's right to possess the rental unit. Based on the testimony and evidence before me, I find the conduct of the Landlords to be reprehensible. I commend the Tenant for his fortitude during the period of his illegal eviction by the Landlords and for his gentle and restrained demeanour during this hearing.

Based on the foregoing, I find the Landlords locked the Tenant out of the rental unit without lawful authority under the Act. FC stated the Landlords have not re-rented the rental unit. As such, I find the Tenant is entitled to an Order of Possession pursuant to section 54(1) of the Act. Based on the foregoing, I order the Landlords to deliver possession of the rental unit to the Tenant effective immediately after service of the Order of Possession on the Landlords by the Tenants. **The tenancy will continue until it is lawfully ended pursuant to the provisions of the Act.**

I find the Tenant is not liable for payment of rent for loss of use of the rental unit from November 23, 2022 until he regains possession of the rental unit. The Landlord is ordered to credit the Tenant on a per diem for the rent he paid for November 2022. The Tenant is ordered to pay rent to the Landlord, in accordance with the terms of the

Tenancy Agreement, commencing within five days of the date he regains possession of the rental unit.

The Tenant may call the RTB contact centre to obtain information on the options he has to enforce his rights under the Act relating to the illegal eviction of the Tenant by the Landlords.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

### Conclusion

The Landlords are ordered to give the Tenant possession of the rental unit effective immediately after service of the Order of Possession on the Landlords by the Tenant. The tenancy will continue until it is lawfully ended pursuant to the provisions of the Act. Should the Landlords fail to comply with this Order of Possession, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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: January 11, 2023

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Residential Tenancy Branch