



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSHINE COAST LIONS HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

ET and FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied to end the tenancy early, for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 15, 2023, the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on February 14, 2023, was personally served to the Tenant. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

### **Issue(s) to be Decided**

Is the Landlord entitled to end this tenancy early; to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act* (*Act*); and to recover the filing fee pursuant to section 72(1) of the *Act*.

## Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2021.

The Agent for the Landlord said that:

- On February 09, 2023, the Agent for the Landlord and the Assistant to the Agent for the Landlord went to the rental unit to investigate a flood;
- Upon entering the unit, they determined that bathtub tap was running and water from the bathtub was overflowing onto the floor;
- When they entered the rental unit, the Tenant appeared to be sleeping in a chair in the living room;
- Water from the bathtub had flowed into the hallway outside of the rental unit, the lobby of the complex, and into unit 106;
- They awakened the Tenant, who began mopping the water in the rental unit;
- When a response team came to address the water damage in the complex, the Tenant walked into unit 106, via an open door;
- The Tenant went to the bathroom of unit 106 and sat on the floor with his back against the bathroom door;
- The Tenant's pants were down around his ankles;
- The police attended at the request of the Agent for the Landlord;
- The Tenant was taken to the hospital by paramedics; and
- The estimated repair for the water damage in the unit, a neighbouring suite, and common areas is between \$25,000.00 and \$35,000.00.

The Assistant to the Agent for the Landlord said that:

- He spoke with the Tenant while he was in the bathroom of unit 106 on February 09, 2023;
- He could not understand the Tenant's responses while they were talking; and
- While they were speaking, the Tenant stood and pulled up his pants.

The Advocate for the Tenant said that:

- He has a copy of a medical report which he did not have sufficient time to submit;
- The medical report declares that the Tenant had a brain artery blockage which was "active" on February 10, 2023;
- The blockage was likely "active" on February 09, 2023; and
- It is likely the Tenant lost consciousness on February 09, 2023, due to a stroke.

In response to questions asked by the Advocate for the Tenant, the Agent for the Landlord said that:

- The Tenant was fully conscious when she entered the unit after the flood occurred;
- The police were called because the Tenant would not leave unit 106;
- She was not present when the paramedics attended unit 106; and
- She does not know why the paramedics were called.

The Tenant said that:

- He recalls starting to fill the bathtub on February 09, 2023;
- He recalls awakening to the sound of “hammering”;
- He was “semi-awake”;
- He has no recollection of going to unit 106;
- He remembers waking up in the hospital;
- He was told he suffered two strokes on February 09, 2023; and
- He was in the hospital between February 09, 2023 and March 01, 2023.

The Witness for the Tenant said that:

- She is the Tenant’s sister;
- The Agent for the Landlord contacted her after the flood on February 09, 2023, and told her that the Tenant was in medical distress;
- The Agent for the Landlord told her the rental unit needed to be vacated to facilitate repairs related to the flood, and
- The Agent for the Landlord was aware the Tenant had mental health issues when this tenancy began.

The President of the Society said that in addition to the incidents that occurred on February 09, 2023, the Landlord wishes to end this tenancy because in July of 2022 the Tenant was digging up paving stones from a path leading to his rental unit and was using them to alter the location of the path. She said that he was uncooperative and belligerent when she asked him to stop.

The Tenant agrees that he was rearranging the path leading to his patio in July because he believes it was his responsibility to do so. He said that he was not uncooperative or belligerent when he was asked to stop.

The Agent for the Landlord said that in addition to the incidents that occurred on February 09, 2023, the Landlord wishes to end this tenancy because on October 20, 2022 the Tenant was creating a disturbance in the courtyard, which resulted in the police arresting the Tenant under the *Mental Health Act*.

The Tenant agrees he was arrested by the police on October 20, 2022 and that he was taken to the hospital.

The Agent for the Landlord said that in addition to the incidents that occurred on February 09, 2023, the Landlord wishes to end this tenancy because on October 23, 2022 the Tenant broke a window in his rental unit in an attempt to access his unit. She said that she went to the rental unit a few minutes after she received an emergency call indicating the Tenant was unable to access his unit.

The Tenant agrees he broke a window in the rental unit on October 23, 2022. He said he broke the window because he was unable to access his rental unit and he was unable to contact the Agent for the Landlord for assistance.

### Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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

- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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.

On the basis of the undisputed evidence, I find that on February 09, 2023, the Tenant caused extraordinary damage to the residential property when his bathtub flooded the unit and other areas in the residential complex.

On the basis of the testimony of the Tenant, the Advocate for the Tenant, and in the absence of any evidence to the contrary, I find that Tenant experienced an acute medical emergency on February 09, 2023. Although I did not have a copy of the medical report the Advocate for the Tenant referred to at the hearing, I found him to be a very credible witness and I have no reason to discount his testimony regarding that report.

I find the testimony of the Witness for the Tenant, who stated that the Agent for the Landlord informed her that the Tenant was in medical distress on February 09, 2023, supports a conclusion that the Tenant experienced an acute medical emergency on that date.

I find the testimony of the Assistant to the Agent for the Landlord, who stated that he could not understand the Tenant's responses while the Tenant was inside the bathroom at unit 106, supports a conclusion that the Tenant experienced an acute medical emergency on February 09, 2023.

I find the Agent for the Landlord's testimony that the Tenant was fully conscious after the flood on February 09, 2023 is of little evidentiary value. There is no evidence that she is qualified to make this determination. While it is clear that the Tenant was mobile after the Agent for the Landlord wakened him, he subsequently had difficulty

communicating with the Assistant to the Agent for the Landlord, which is not indicative of an individual who is fully conscious.

I find, on the balance of probabilities, that the Tenant's acute medical emergency rendered him incapable of preventing and responding to the flood in his unit.

While I accept that the Tenant's inability to prevent and respond to the flood in his unit caused extraordinary damage to the complex, I am not satisfied that the intent of section 56(2)(a)(v) of the *Act* is to permit a landlord to end a tenancy when a tenant causes damage due to behaviour over which the Tenant had no control.

This does not imply that the Tenant is not responsible for repairing the damage caused by the flood in his unit. I find that he is responsible for the cost of those repairs, pursuant to section 32(3) of the *Act*, even though he did not intentionally cause the damage.

Rather than ending the tenancy as a result of the flood damage, pursuant to section 56(2)(a)(v) of the *Act*, I find that the Tenant should be given a reasonable opportunity to pay for the cost of repairing the unit/complex. In the event the Tenant does not repair the damage caused by the flood, the Landlord then has the option of ending this tenancy, pursuant to section 47(1)(g) of the *Act*.

On the basis of the undisputed evidence, I find that on February 09, 2023, the Tenant entered another suite in the residential complex. While this could be seen as the Tenant seriously jeopardizing the lawful right or interest of the landlord or another occupant, I find it highly likely that this behaviour was related to his acute medical emergency. I therefore find that this behaviour is not grounds to end the tenancy pursuant to section 56(2) of the *Act*, for reasons that have already been articulated.

In these very unique circumstances, I find that the Landlord does not have grounds to end this tenancy for the incident(s) that occurred on February 09, 2023, pursuant to section 56(2) of the *Act*.

In considering this application to end the tenancy pursuant to section 56 of the *Act*, I have placed no weight on the incidents that occurred in July and October of 2022. While those incidents may be grounds to end the tenancy pursuant to section 47 of the *Act*, they are not grounds to end the tenancy early. These incidents occurred many months before the Landlord applied to end this tenancy pursuant to section 56 of the *Act* and they are not sufficiently recent to justify an early end to the tenancy.

I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 56 of the *Act* and I dismiss that application. The Landlord retains the right to serve the Tenant with a One Month Notice to End Tenancy for Cause pursuant to section 46 of the *Act*.

I find that the Landlord has failed to establish the merit of this Application for Dispute Resolution and I dismiss the application to recover the fee filing this Application for Dispute Resolution.

### Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply. This tenancy shall continue until it is ended in accordance with the *Act*.

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: March 02, 2023

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Residential Tenancy Branch