



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Centurion Property Associates,  
Inc. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for an order of possession of the rental unit based upon their claim the tenancy agreement is frustrated and recovery of the filing fee.

The landlord's agent (agent) and legal counsel (counsel) attended the hearing. The agent was affirmed.

The landlord provided documentary evidence and testimony that the tenant was served their application for dispute resolution, evidence, and notice of hearing (NODRP) on June 15, 2023, to an email address agreed to by the tenant for service of documents. The landlord submitted the signed notice of service as well as the tenant's signed agreement. Based on this evidence, I find the landlord served the tenant in accordance with section 89(1)(f) of the Act and deemed served 3 days later.

The agent and counsel were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and recovery of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence shows the tenancy began on September 17, 2022, monthly rent is \$2350 and the tenant paid a security deposit of \$1175. The landlord submitted the tenant has not paid the monthly rent since April 2023 and the security deposit has been refunded.

The landlord wrote in their application the following:

*The building has been deemed unsafe by the City of (\*\*) and the occupancy permit has been revoked. The Tenancy is frustrated and the tenant refuses to move out of the building. There is a risk of serious life safety concerns and the building needs to be vacated. The landlord has served multiple notices without success. This is the only unit that is still occupied in the buliding.*

[Reproduced as written except for  
anonymizing identifying information]

The agent submitted that they received notice from the local municipality in April 2023, that their occupancy permit has been revoked and that all tenants must vacate. Upon that notification, the landlord in turn sent notices on April 24, 2023, to all the tenants that they must vacate their rental units.

The agent submitted that all tenants from the 90 units in the building have vacated, apart from this tenant. This tenant has refused to leave.

The landlord's notice to the tenants of the building is reproduced in part as follows:

**By way of this bulletin, we are providing you with the difficult but important notice to vacate your unit immediately.**

We recognize that there is never a convenient time to receive this notice, and for those of you who have been long-time tenants, this may be particularly frustrating. We share your frustrations and apologize for the significant inconvenience this causes, however, our first priority is your safety. We ask residents to only pack essential items at this time. We are working diligently to gather additional information and will provide an update by the end of the week.

We recently received notice from the Engineers and Geoscientists of BC ("EGBC") about serious concerns with certain structural elements of the building. While the EGBC did not recommend evacuations, **we immediately retained an independent engineer to visit the site, who identified serious safety concerns and recommended that tenants evacuate.**

In light of this development, your current contract with  Inc. has been frustrated as of **April 24<sup>th</sup>, 2023**. This means that under the laws of the Residential Tenancy Act [SBC 2002] Ch. 78 and Frustrated Contract Act [RSBC 1996] Ch. 166, both parties to the contract are relieved from fulfilling their obligations under the contract. Therefore, your tenancy has ceased, along with your rental obligations, and you must vacate your unit.

**Anyone who chooses to ignore this notice and does not vacate, does so at their own risk and will be deemed to** freely accept and fully assume all such risks, dangers and hazards and possibility of personal injury, death, property damage, expense and related loss, including loss of income or property.

[Reproduced as written except for anonymizing personal information to protect privacy]

The agent submitted that the building is fenced off and the tenant accesses their ground level rental unit by going around the security fence. Structural engineers are on site every day assessing the structural defects making the building unsafe for occupancy. The agent submitted that the rental unit is in the worst possible place in the building as the area of highest concern for the engineers is the storage area adjacent to the rental unit. However, the landlord is not able to access the rental unit for assessment purposes. The agent submitted that the tenant's rental unit is one of, if not the most, unsafe part of the building.

The agent submitted that they just want the tenant to vacate so they will be safe. Counsel submitted this is of particular concern due to the possibility of earthquakes. Counsel pointed out that there was a 7.2 magnitude earthquake off the coast of Alaska a few days prior, and had that been closer to the municipality, the building likely would not have withstood the effects.

Counsel and the agent submitted that there is no set time for remediation to be completed. Counsel and the agent further confirmed that they have made all efforts to assist the tenants in the building to relocate, which included financial compensation.

Counsel submitted that the address for the residential property is no longer recognized in the Canada Post system, as the occupancy permit was withdrawn.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden of proof is on the party making the claim, on a balance of probabilities.

As the tenant failed to attend the hearing or file evidence, despite being served the NODRP, I find the landlord's application is undisputed.

Under the Act, the landlord may apply for an order ending the tenancy because the rental unit is uninhabitable, or the tenancy is otherwise frustrated.

*Residential Tenancy Policy Guideline #34* notes, "A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because of an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract."

This policy further suggests that a contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

I find the landlord submitted clear and convincing evidence that the municipality withdrew the occupancy permit for the residential property to protect the "life safety" of the residents due to the structural designs and integrity of the building. The municipality further identified serious issues were identified by the Association of Professional Engineers and Geoscientists of BC.

Further, the evidence shows that the municipality rendered the building was unsafe and withdrew the occupancy permit.

For this reason, I find the landlord submitted sufficient evidence that the building became uninhabitable, and as a result, I find the tenancy agreement is frustrated, through no fault of either party.

I order the tenancy agreement ended on April 24, 2023, the date the tenants were notified by the landlord their tenancy agreement was deemed frustrated. To give effect to this order, I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective **2 days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenant.

I grant the landlord recovery of their filing fee of \$100. The landlord is issued a monetary order in that amount, which must be served to the tenant to become enforceable.

### Conclusion

The landlord's application is granted in full, as described above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 17, 2023

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Residential Tenancy Branch