



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on August 3, 2023, wherein the Landlords sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on August 24, 2023. Both parties called into the hearing.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

This hearing convened as an expedited hearing pursuant to *Rule 10*. *Rule 10.2* provides that the applicant must submit *all* evidence in support of their request at the time of filing. The Landlords filed their application on August 3, 2023. Over two weeks later, and only six days prior to the hearing of this matter, the Landlords submitted further evidence on August 18, 2023. I decline to consider this evidence pursuant to *Rule 10.2* as this evidence was largely available at the time the application was made and is therefore not *new* evidence as contemplated by *Rule 3.17*.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Landlords entitled to an early end to tenancy pursuant to section 56 of the *Act*?
2. Should the Landlords recover the filing fee?

### Background and Evidence

In support of their claim the Landlord R.H. testified as follows. She stated that the tenancy was ongoing at the time the Landlords' purchased the rental property on July 21, 2023. The Tenants pay \$1,500.00 per month in rent.

The circumstances giving rise to the Landlords' request to end the tenancy on an expedited basis are that the Tenants changed the locks on the rental property without the Landlords' knowledge or consent and have refused the Landlords access to the rental property to attend to necessary repairs.

R.H. stated that the rental property is on Vancouver Island and they live on the mainland such that they must take a ferry to travel to the rental property. She stated that the Tenant M.B. offered a key to the Landlords on August 12, 2023, *after* the Landlords were on their way back to the ferry and after they had been denied access to the rental property.

R.H. stated that J.B. went to the property on July 22, 2023 and discovered a leak from the toilet which leaking into the room below. The Landlords did not inspect the rental property before purchasing the property and were not aware of the leak until after they purchased it. The water was shut off to the toilet that day and the leak was repaired on July 24, 2023.

The Landlords attempted to communicate with the Tenants on July 28, 2023 about coming in to remove the drywall and attend to mold remediation. R.H. stated that the Tenants were away and changed the locks thereby preventing the Landlords from attending to this repair.

R.H. stated that they do not know what is going on inside the rental property and are worried as the Tenants stated that they were not providing access and were going to attend to the repairs themselves. R.H. also stated that to their knowledge the Tenants

did attend to some repairs as the Tenants sent photos of what they have done, but the Landlords' concern is that they don't know if the work has been done *properly*. She confirmed that from the photos the Landlord could see that the drywall and insulation has been removed and there is paint on the 2x4s.

R.H. confirmed that there is no risk of ongoing leaking as the leak has been repaired. She also confirmed there is no imminent danger to the property or the Landlords.

R.H. further confirmed they issued a 2 Month Notice to End Tenancy for Landlord's use on July 22, 2023. The effective date of that Notice is September 30, 2023. The Landlords alleged the Tenants have not applied to dispute that Notice; however, a review of Branch records confirms a hearing date has been set for December 4, 2023 on the Tenants' application to cancel the 2 Month Notice, and the Landlords' application for an Order of Possession based on the Notice. The file numbers for those applications is included on the unpublished cover page of this my Decision.

For reasons which I will detail in the Analysis section I did not require testimony or submissions from the Tenants in response to the Landlords' claim.

### Analysis

A tenancy may be ended early pursuant to section 56 of the *Act*, which provides as follows:

#### **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.

(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 italics]***

This is a two part test and the landlord must prove both parts on a balance of probabilities. In this case, I find the Landlords have failed to meet this test.

The evidence indicates there was risk to the property in terms of the leaking toilet, however that leak has been repaired. Further, I am satisfied there is no imminent risk to the property as the Tenants have taken steps to remove the drywall and insulation thereby limiting moisture issues such as the spread of mold. While those repairs may not be to the Landlords' satisfaction, I am not satisfied they create a situation in which it would be unreasonable for the Landlord to wait for a 1 month notice to end tenancy to take effect.

I therefore dismiss the Landlords' request for an early end to this tenancy pursuant to section 56.

As discussed during the hearing, I make the following Orders pursuant to sections 29, 31, and 32 of the *Act*:

1. The Landlord shall have access to the rental property at 2:00 p.m. on Saturday August 26, 2023 to inspect the Tenants' repairs as well as to determine if any further repairs or remediation is required. The Landlords may take photos and videos of the rental property at that time.
2. The Tenants shall ensure the Landlords have access to the rental property and must provide the Landlords with keys to all locks which give entry to the rental property no later than 2:00 p.m. on Saturday August 26, 2023.
3. Should the Landlords determine the Tenants repairs are inadequate and must be redone or repaired, the Landlords may make an application to the Residential Tenancy Branch for monetary compensation from the Tenants for any related costs.
4. The Landlords may attend to such further repairs as they deem necessary provided the Tenants are given notice pursuant to section 24 of the *Act*.
5. Should the Tenants refuse the Landlords access as set out above, or refuse to provide the Landlords with keys as ordered, the Landlords:
  - a. may hire the services of a locksmith to open and change said locks and seek compensation from the Tenants for any related costs; and,
  - b. may make a further request for an early end to tenancy.

### Conclusion

The Landlords' application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed with leave to reapply. This tenancy shall continue until ended in accordance with the *Act*.

Having been unsuccessful the Landlords are not entitled to recover the filing fee.

The Landlords shall have access to the rental property at 2:00 p.m. on Saturday August 26, 2023. The Tenants shall not prevent the Landlords from having such access and shall ensure they provide the Landlords with keys to any locks at the rental property.

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: August 24, 2023

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Residential Tenancy Branch