

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlords' application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession and authorization under section 72 of the *Act* to recover their filing fee for this application from the tenant.

The tenant did not attend the hearing. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. They testified that they handed the tenant a copy of their application for dispute resolution Monday, October 25, 2010. I am satisfied that the landlords served their application for dispute resolution to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

Are the landlords entitled to an early end to this tenancy and an Order of Possession?  
Are the landlords entitled to recover their filing fee for this application from the tenant?

### Background and Evidence

The landlords testified that the tenant commenced living at these rental premises on September 6, 2006. The monthly rent is presently \$575.00, payable on the first of each month. The landlords testified that they continue to hold the tenant's \$250.00 security deposit paid on or about September 6, 2006.

The landlords presented into evidence a copy of the tenant's July 1, 2010 letter which they maintained was her written notice to end this tenancy. During the hearing, they agreed that this was not a proper notice to end tenancy as it did not mention that it was a notice to end tenancy and did identify a date by which the tenant was planning to vacate the premises. They testified that she told them on October 25, 2010 that she

was planning to vacate the premises on October 27, 2010. They said that the tenant has been telling them for months that she was planning to move, but has not done so.

The landlords said that they issued the tenant a 1 Month Notice to End Tenancy for Cause earlier in October 2010. They initially had a dispute resolution hearing date for that application scheduled for November 12, 2010. However, they said that two recent incidents occurred that required the attendance of the local fire and police departments at the tenant's rental premises. They said that these incidents prompted them to apply for an early end to this tenancy because of their concerns for the safety of those who live in the tenant's four storey building.

### Analysis

Section 56(2) and (3) of the *Act* allow a landlord to make application to end a tenancy early without service of a Notice to End Tenancy when it would be unreasonable and unfair to both the landlord and the other occupants of the residential property to wait for a notice to end tenancy for cause to take effect. Section 56 (2)(a)(ii) and (iii) of the *Act* permits me to make an order specifying an earlier date for the end of a tenancy than would be the case had the landlord issued a one month notice to end a tenancy for cause, only if I am satisfied that, among other matters,

*the tenant has*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; or*

*(iii) put the landlord's property at significant risk;...*

The evidence indicates that there have been two incidents in October 2010 in which the local fire department attended due to smoke and fire in the tenant's rental suite. The landlords testified that the tenant initially refused to open her door on these occasions. On both occasions, they said police had to be called to allow the fire department to enter the rental premises. On the second occasion, the landlords testified that fire department staff found an object on fire in the rental premises and threw it into the common area of the building where they extinguished the fire.

I am satisfied that the landlords have reason to seek an early end to this tenancy as the tenant's actions seriously jeopardize the safety of the occupants of the tenant's building and put the landlord's rental property at significant risk. As such, I allow the landlord's application for an early end to this tenancy and issue an Order of Possession to take effect within 24 hours of the landlord's service of this notice to the tenant(s).

As the landlords were successful in this application, the landlords are entitled to recover their \$50.00 filing fee paid for this application. The landlords testified that they continue to hold the tenant's security deposit of \$250.00 plus interest. Although the landlord's application does not seek to retain a portion of the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$50.00 from the tenant's security deposit to recover their filing fee for this application.

### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 24 hours of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. I direct the landlord to retain \$50.00 from the tenant's security deposit to allow the landlords to recover their filing fee for this application from the tenant.

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*.