



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0989460 BC LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      ET FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an early end of this tenancy pursuant to section 56 and recovery of the filing fee pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 30 minutes. The corporate landlord was represented by its agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the application for dispute resolution and evidence by registered mail sent on December 24, 2019. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on December 29, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

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

### Background and Evidence

This periodic tenancy began in June 2016. The rental unit is the main floor of a detached home. Monthly rent is currently \$1,520.00 payable on the first of each month. A security deposit of \$700.00 was collected at the start of the tenancy and is still held by

the landlord. The landlord testified that the tenant had paid full rent for the month of December 2019.

The landlord testified that there was a major flood in the rental unit on December 3, 2019 due to a malfunctioning hot water heater. The landlord gave evidence that the rental unit became uninhabitable due to the extensive water damage. The tenant vacated the suite at that time leaving their furnishings and possessions in the rental unit. The landlord testified that they have retained restoration companies who have confirmed that the rental unit is presently uninhabitable and that extensive work needs to be performed to the rental unit.

### Analysis

Section 56.1 of the Act provides that an order may be issued deeming a tenancy agreement ended on the date that a rental unit becomes uninhabitable or the tenancy agreement is otherwise frustrated.

Residential Tenancy Policy Guideline 34 provides that:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because 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.

I accept the evidence of the landlord that there was a major flood in the rental unit on December 3, 2019 caused by the malfunction of the hot water heater in the building. I accept the landlord's evidence that the rental unit became uninhabitable due to the extensive flooding and water damage. I find that the tenancy agreement was frustrated as of December 3, 2019 when the rental unit could no longer be used for habitation and the tenancy ended on that date.

As such, I find that pursuant to section 56.1 of the Act the landlord is entitled to an Order of Possession of the rental property. As the date of the frustration of the tenancy agreement has passed I find it appropriate to issue an Order of Possession enforceable two days after service.

I accept the evidence of the landlord that the tenant paid the full rent in the amount of \$1,520.00 for the month of December 2019. As the tenancy was frustrated and ended on December 3, 2019, I find that the tenant was only obligated to pay rent for the 3-day period when the tenancy was still active. I calculate the amount of rent for the 3-day period to be \$147.10. Therefore, I find that there is an overpayment of \$1,372.90 for the month of January which the landlord continues to hold.

As the landlord was successful in their application I find it appropriate to issue an monetary award allowing the landlord to recover their filing fee from the tenant. I allow the landlord to satisfy this monetary award by deducting the sum of \$100.00 from the overpaid rent of \$1,372.90 held by the landlord.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is authorized to reduce the overpaid rent for December 2019 by \$100.00 from \$1,372.90 to \$1,272.90.

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 10, 2020

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Residential Tenancy Branch