



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- An early end to the tenancy pursuant to section 56 of the Act; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call at 9:30 AM (Pacific Time) on January 16, 2023, and was attended by the Landlord's agent M.Z (Agent). All testimony provided was affirmed. Neither the Tenant nor an agent for the Tenant attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence to be relied on by the applicant at the hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me relating to extraordinary damage to the rental unit, as well as the Notice of Dispute Resolution Proceeding Package (NODRP) for the Expedited Hearing (including a copy of the Application and the Notice of Hearing), were posted to the door of the Tenant's rental unit on December 17, 2022. A witnessed and signed proof of service document and photographs were submitted in support of this affirmed testimony. Residential Tenancy Branch (Branch) records indicate that the NODRP was emailed to the Landlord on December 16, 2022, by the Branch for service no later than December 17, 2022. Based on the documentary

evidence and affirmed testimony before me, and in the absence of any evidence to the contrary, I find that the documentary evidence before me and the NODRP were posted to the Tenant's door on December 15, 2022, in compliance with sections 59(3) and 89(2)(d) of the Act and rule 10.3 of the Rules of Procedure. I therefore deem the Tenant served three days later, on December 20, 2022, pursuant to section 90(c) of the Act. Additionally, the Agent stated that they know the Tenant received the evidence and NODRP because on January 3, 2023, they received an email from the Tenant stating that if the Landlord wanted to evict them, to serve them with a Two Month Notice instead.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on-time using this information. As I am satisfied that the Tenant was properly notified of the hearing and the Application as set out above, and the Agent attended the hearing on time and ready to proceed, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

The Agent advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the e-mail address set out in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the Act?

Is the Landlord entitled to the recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The written tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on September 1, 2022, and may continue on a month-to-month basis at the end of the fixed term on August 31, 2023. It states that rent in the amount of \$2,800.00 is due on the first day of each month and that a \$1,400.00 security deposit is required. At the hearing the Agent confirmed that they still hold the Tenant's \$1,400.00 security deposit in trust, and requested permission to withhold \$100.00 from the security deposit for recovery of the filing fee.

The Agent stated that they gave proper written notice of entry for the purpose of inspecting the rental unit by email on December 6, 2022, and by posting it to the door of the rental unit the following day on December 7, 2022. The Agent stated that the notice of entry stated that they would inspect the rental unit at 11:00 A.M. on December 15, 2022. The Agent stated that when they arrived for the inspection as scheduled, the Tenant opened the door but refused entry, and then the Tenant called 911. The Agent stated that they waited in the lobby for the police to arrive, and that they were subsequently granted access to the rental unit by/with the police. The Agent stated that when they gained access to the rental unit for the inspection, they discovered that the rental unit, which had been new at the start of the tenancy, has been very significantly damaged by the Tenant. The Agent submitted a move-in condition inspection report showing the condition of the rental unit at the start of the tenancy, and photographs and videos of the rental unit on the date of the inspection on December 15, 2022, wherein the following can be seen:

- Deep scratches/gouges on interior and exterior walls;
- A series of very large holes (several feet by several feet), in the drywall of several rooms, and in doors, which have been covered in clear packing tape;
- A series of large cracks/dents in the drywall of several rooms;
- A very significant number of dents/semicircular scuff marks on the wall of a bedroom;
- Large scratches/dents in the laminate/wood flooring throughout the unit;

- Writing on/etched into drywall throughout the rental unit; and
- A doorstop embedded into a door.

As a result of the above, the Agent argued that the Tenant has caused extraordinary damage to the rental unit. The Agent also argued that it would be unreasonable, or unfair to the Landlord to wait for a notice to end tenancy under section 47 of the Act to take effect because they are worried that the Tenant is continuing to cause further damage to the rental unit and the Tenant has refused entry, resulting in police attendance. As a result, the Landlords sought an order of possession for the rental unit as soon as possible.

Although the teleconference remained open for the 10-minute duration of the hearing, no one attended the hearing on the Tenant's behalf to provide any evidence or testimony for my consideration.

### Analysis

Based on the tenancy agreement in the documentary evidence before me, I am satisfied that a tenancy to which the Act applies exists between the parties.

Section 56(2)(a)(v) and 56(2)(b) of the Act state that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession if satisfied, in the case of a landlord's application, the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property and that 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.

Not only am I satisfied that the damage shown in the videos and photographs is extraordinary, given the amount and nature of the damage and the short duration of the tenancy, but I also find that the damage shown was clearly intentional, and not accidental in nature. It appears to me as though the Tenant has used a sharp object, such as a knife or box-cutter to scratch/gouge the walls and etch words into them. The size and number of the holes throughout the rental unit are also shocking, and are so large that the wiring for the rental unit is clearly exposed through some of them. A metal doorstop has also become embedded in a door, indicating to me that the door was slammed so forcibly into the door stop, that it became imbedded in the door and pulled from its anchor. Writing can also be seen throughout the rental unit on numerous walls.

As a result, I am satisfied that the drywall in much, if not all, of the rental unit is beyond repair and will need to be replaced, along with some, if not all of the flooring, some of the trim, and several doors.

Based on the above, I am satisfied that the Tenant has caused extraordinary damage to the rental unit, as the damage shown in the videos and photographs goes far beyond reasonable wear and tear, or accidental damage, and covers many areas throughout the rental unit. Further to this, I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for a notice to end tenancy to take affect under section 47 of the Act, as the nature and volume of damage already created by the Tenant in the short period of time since the start of the tenancy on September 1, 2022, and the date of the inspection on December 15, 2022, is shocking. I am also satisfied that the Tenant refused lawful entry to the rental unit by the Landlord or their agents, necessitating police involvement, and I accept that the concerns of the Landlord that the rental unit will continue to be damaged by the Tenant until the tenancy is ended are legitimate. As a result, I grant the Landlord's Application seeking an early end to the tenancy under section 56 of the Act, and I provide the Landlord with an Order of Possession effective **two days** after service on the Tenant.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, and as per the Agent's request at the hearing, I authorize the Landlord to withhold \$100.00 from the Tenant's security deposit. The remaining balance of which must be dealt with by the Landlord in accordance with the Act.

### Conclusion

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order on the Tenant**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(1) and 72(2)(b) of the Act, the Landlord is entitled to withhold \$100.00 from the Tenant's security deposit for recovery of the filing fee paid for this Application.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: January 16, 2023

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Residential Tenancy Branch