



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **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) on March 3, 2023, 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 March 23, 2023, and was attended by the Landlord and the Tenant. All testimony provided was affirmed. As the Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and the documentary evidence before me for consideration, and raised no concerns with regards to service dates or methods, the hearing proceeded as scheduled and the Landlord's documentary evidence was accepted for consideration. No documentary evidence was submitted by the Tenant. The parties were 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 participants were advised that 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 participants were 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 participants were also advised that personal recordings of the proceeding were prohibited 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.

### Preliminary Matters

The Tenant stated that their surname was misspelled in the Application and provided me with its correct spelling. The Application was amended accordingly.

### 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 parties agreed that a tenancy agreement under the Act exists between them, although they disputed whether this agreement was written or oral.

The Landlord stated that the Tenant or their guests plugged the toilet in the rental unit, resulting in a flood that caused more than \$30,000.00 worth of damage to the unit below, and that the Tenant has been preventing access to the rental unit. As a result, the Landlord stated that the damage to the rental unit cannot be properly assessed and remediated.

Although the Tenant acknowledged that there was a flood in the rental unit caused by the toilet being plugged, they denied that there was any damage to the rental unit as a result. They also denied the Landlord's allegations that they were prohibiting access. The Tenant stated that the Landlord had texted them regarding gaining access, but had not provided proper notice in writing, so access was denied. The Landlord stated that the text messages contained the required information and were in writing, therefore they constituted proper written notice.

As a result of the above, the Agent argued that the Tenant has caused extraordinary damage to the property. 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 water damage to the rental unit continues to get worse and the Tenant has refused entry. As a result, the Landlord sought an order of possession for the rental unit as soon as possible. In support of their testimony the Landlord submitted documentary evidence such as copies of written communications between themselves, the insurance adjuster, the strata president, and the Tenant regarding the flood.

### 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.

Based on the documentary evidence and affirmed testimony before me, I am satisfied that the Tenant or a person permitted on the residential property has caused extraordinary damage to the residential property in which the rental unit is located, including both the rental unit, and the unit directly below. I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for a notice to end tenancy to take effect under section 47 of the Act, as I am satisfied that the Tenant is prohibiting access or making it difficult for the Landlord to access the rental unit to properly assess the damage and make repairs.

Although the Tenant denied being provided with written notice for entry, they acknowledged receiving text messages from the Landlord regarding entry requests, and the Landlord stated that these text messages included the required information set out under section 29 of the Act. While the Tenant argued that text messages do not constitute written notice for the purpose of section 29 of the Act, I disagree as text messages are a form of written communication. Further to this, I find that the flood constituted an emergency and that the Landlord would have been permitted access to the rental unit pursuant to section 29(1)(f) of the Act, even if no notice had been given. As a result, I find the Tenant's denial of access particularly egregious.

As a result of the above, 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 67 of the Act, and as per the Landlord's request at the hearing, I grant the Landlord a monetary order in the amount of \$100.00.

### 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 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$100.00**. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: March 28, 2023

---

Residential Tenancy Branch