



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**ET, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an early end of the tenancy, an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The tenant confirmed receipt of the landlord's evidence within the required time-frame.

The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided. The tenant did not supply a written submission.

### **Issue(s) to be Decided**

Is the landlord entitled to end this tenancy early without the requirement of a Notice to End Tenancy?

Is the landlord entitled to an Order of possession?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The tenancy commenced in December 2011. The tenant rents a 2 bedroom unit in the lower level of a home that has an upper rental unit.

The parties agreed that a tenancy agreement was signed; a copy was not supplied as evidence. The tenant acknowledged that she was to rent the home for herself and 2 children.

The landlord said that the tenant has people coming and going from the home, that a window has been broken and that he wants the tenancy to end.

A type-written witness statement supplied by "D.," an occupant of the upper unit, was supplied as evidence. This statement was signed and acknowledged by a Notary Public, who attached their seal to the document. The statement was executed on November 16, 2012.

"D." was not available at the hearing; he had left for work the weekend prior to this hearing.

The statement of the occupant contained the following observations, that:

- He has lived in the rental unit for an extended period of time;
- He is away for periods of time due to work;
- He and his roommate are quiet people;
- Shortly after the tenant moved in downstairs a window was smashed;
- When the tenant has her male friend at the home the sounds of fighting, crying and screaming can be heard at times;
- On November 10, 2012 he was having a visit with his 3 year old daughter and another young child, for a sleep over;
- Shortly after 8 p.m. he saw the tenant's male friend yelling at her, telling her not to come back;
- That the occupant went to the local gas station across the street so he could purchase something and he was approached by the tenant's male friend who said:

*"I am sick of everyone's (expletive) and if something does not change I am going to start shooting people."*

The male then told "D." that he was a "goof" and that he and his roommate should move. The male then lunged at "D.", ripped open his shirt to show him a tattoo; he then asked if the tattoo meant anything to "D."

"D." called the police and explained what had happened; 3 police cruisers arrived and the police suggested that "D." remove the children from his unit. "D." then took the children to a hotel for the night. He has spent only 1 night at the home since this incident as he believes he is now in danger. The 1 night spent at the rental unit caused "D." worry for his safety and that of his belongings.

The tenant responded that she did not witness her male friend make these threats and could not respond to the allegation of threats made. On the evening of November 10, 2012 she did get upset as her male friend had someone at the home who she did not like, so during the confrontation she left to go to the gas station across the road. The

tenant did not indicate that she has asked her male friend to stay away from the property and acknowledged he is her occasional guest.

The landlord said that the occupant has been frightened by the tenant's guest and that he wants the tenant to vacate. The landlord applied requesting an order of possession on November 14, 2012.

### Analysis

In order to establish grounds to end the tenancy early, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the landlord and the sworn statement of his witness, I find that the landlord has met that burden.

In relation to sufficient cause, I find that the disturbance created on November 10, 2012, by the male, who is a regular guest of the tenant, forms sufficient cause to end the tenancy without the benefit of a Notice ending tenancy. Section 56(2) of the Act provides:

*(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***

(Emphasis added)

I found the sworn statement of the occupant spontaneous and credible. It was written in a manner that was consistent and believable.

The tenant did not offer any information that would lead me to believe that the behaviour described in the statement would be out of character for her male friend. The tenant acknowledged that the male is her guest and that she has not barred him from entering the residential property; which would have seemed a reasonable step, given the alleged threats made against the occupant.

I have also based on my assessment, in part, on the meaning of the term interfere and referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

"To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others."

I accept that the tenant's male friend did significantly interfere with the occupant's right to quiet enjoyment; to the point where he does not feel secure in his home. Even though the alleged threats occurred at a property across the road from the rental unit property, I find they were made knowing that the occupant's sense of safety in his home would be placed in jeopardy. I have based this assessment on the portion of the sworn statement in which the occupant described being told to move; combined with the threats of violence and the aggressive display of the male's tattoo.

The occupant of the upper unit has the right to expect the quiet enjoyment of his home and the landlord has the responsibility to protect that right. When the tenant's guest threatened the occupant, as a guest of the tenant, he then placed the tenancy in jeopardy. The tenant did not provide any submission that countered the allegation that her guest can be threatening and aggressive; which led me to place additional weight on the occupant's statement.

Therefore, pursuant to section 56 of the Act, I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's application has merit I find that the landlord is entitled to recovery of the \$50.00 filing fee.

Based on these determinations I grant the landlord a monetary Order for \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

### Conclusion

The landlord has been granted an Order of possession.

The landlord has been granted a monetary Order in the sum of \$50.00 for filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 28, 2012.

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Residential Tenancy Branch