



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Parkdale Enterprises  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution, seeking an order to end the tenancy early, receive an order of possession, and to recover their filing fee.

The tenant and an agent for the landlord (the "agent") attended the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Initially, the tenant stated that he did not receive the evidence from the landlord; however, once the agent stated how he served the evidence on the tenant, the tenant then changed his testimony and stated that he had received the evidence of the landlord and had reviewed it prior to the hearing. The tenant confirmed that he did not submit evidence in response to the landlord's application. I find the tenant was served in accordance with the *Act* with the evidence of the landlord.

### Preliminary Matter

At the end of the hearing, after I rendered my decision orally, the tenant alleged he was being evicted because of his sexual orientation. The agent vehemently disputed the tenant's allegation and clarified that the tenant was being evicted due to his violent and disruptive behaviour. To clarify, the tenant raised the issue of sexual orientation after my decision had been made; nevertheless, it was not a factor in the decision rendered.

### Issue to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession?

### Background and Evidence

A month to month tenancy began on December 5, 2012. Monthly rent in the amount of \$440.00 is due on the first day of each month. A security deposit of \$220.00 was paid by the tenant at the start of the tenancy.

The landlord has applied for an order of possession to end the tenancy early based on the tenant being violent and significantly interfering with or unreasonably disturbing another occupant or the landlord of the residential property. The landlord submitted an incident report dated April 5, 2013 signed by another tenant, RB, and three photos which the landlord stated shows damage to the tenant's door and door frame.

During the hearing, the agent summarized the incident report dated April 5, 2013. In the incident report it is written that the tenant from the rental unit was "smashing his door with a metal pipe to gain entrance" and "yelling". The incident report indicated that the yelling and damage went on for roughly an hour between 3:00 a.m. and 4:00 a.m. and that the tenant threatened another tenant, RB, the person who provided the information for the incident report. Tenant RB, signed the incident report, which the agent stated was written based on an interview with tenant RB. The three photos submitted in evidence show damage to a door and door frame, including pieces of the door and door frame on the carpet below the door. The agent stated that this was the tenant's door, while the tenant denied that his door looks like that. The agent stated that the tenant has since painted over the damaged door and door frame with paint.

The tenant's version of events on April 5, 2013 were that he arrived at the rental unit about 3:40 a.m. and saw the door damaged and picked up the metal pipe from the floor outside the rental unit, but denies damaging the rental unit door or door frame. The tenant testified that his friend was inside the rental unit but would not open the door for him, so the tenant eventually left and met his friend the following day. The agent stated that he was told by tenant RB, that the tenant and his friend had a fight, and that the friend would not allow the tenant into the rental unit which resulted in the tenant yelling and smashing the door with the metal pipe and leaving the building before the police arrived.

The agent stated that since the start of the tenancy, the police have been called six times since December 5, 2012 specifically as a result of the actions of the tenant. Since the April 5, 2013 incident, the agent stated that the police had to be called again on April 13, 2013 after the tenant was upset and removed his personal items from the rental unit and put them out into the common hallway. According to the agent, the police were able to talk the tenant into returning his personal items from the hallway into the rental unit.

The tenant's version of events were that the police told him on April 13, 2013 that due to water leaking in his rental unit, that they felt sorry for him and understood why he put his items into the hallway due to a water leak.

The tenant alleged that the agent was not being truthful and had made up the information to get him out of the rental unit. The agent stated that the tenant is violent, has a bad temper and that eight other tenants have complained to him verbally about the tenant continually disturbing them. The agent testified that tenant RB was the only tenant willing to provide the statement for the incident report including details of the tenant's disruptive behaviour and the incident which occurred on April 5, 2013. The signature of tenant RB is on the incident report.

The parties agreed that the tenant received a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on March 30, 2012 with an effective vacancy date of April 30, 2013. The tenant confirmed that he did not dispute the 1 Month Notice.

The tenant stated that he feels unsafe in the building due to other occupants being intoxicated and smelling like alcohol. The tenant stated that he did not dispute the 1 Month Notice as he cannot read; however, the tenant read from the incident report during the hearing without assistance. The tenant did not call any witnesses during the hearing or submit any documentary evidence prior to the hearing.

The tenant was formally cautioned during the hearing not to interrupt the Arbitrator and the agent. The tenant was reminded at the start of the hearing and during the hearing to allow the other party to finish their testimony before responding.

### Analysis

Based on the documentary evidence and the testimony provided by the parties during the hearing, and on a balance of probabilities I find the following.

I **do not find** the tenant to be credible as his testimony was inconsistent throughout the hearing. For example, the tenant initially stated at the outset of the hearing that he did not receive the incident report and photos as part of the landlord's evidence, and later changed his testimony that he had received the evidence and that it was in front of him during the hearing. Also, the tenant disputed that the photo evidence showed damage to the his rental unit door, yet confirmed that the rental unit door was damaged and a metal pipe was on the floor outside of the rental unit when he arrived at 3:40 a.m. on April 5, 2013. Finally, the tenant stated that he did not dispute the 1 Month Notice

because he could not read, yet read from the incident report during the hearing without difficulty or assistance.

I find the tenant's version of events unlikely; specifically that someone other than the tenant had damaged the rental unit door while his friend was inside, that his friend would not open the door for the tenant even after the tenant identified who he was. I find it equally unlikely that the tenant would arrive home at 3:40 a.m., see his rental unit door damaged, a metal pipe on the floor, be denied access by his friend, and then leave the building without speaking to police about damage allegedly caused by someone other than the tenant, or wait for confirmation that his friend was safe inside the rental unit.

I prefer the testimony of the agent and the incident report signed by tenant RB, as the agent's testimony was consistent throughout the hearing. I find it more likely than not that the tenant had a disagreement with his friend, resulting in the tenant using a metal pipe to attempt to gain access to his rental unit which damaged the door and door frame, and causing his friend to be fearful to the point where the friend denied entry of the tenant into the rental unit. Eventually, the tenant left before the police arrived. The tenant could have called his friend as a witness for the hearing to dispute the incident report; however, he chose not to do so.

**I find** and I am satisfied that the landlord has met the burden of proof in proving that the tenant significantly interfered with and unreasonably disturbed other occupants of the residential property and the landlord. I am also satisfied that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the *Act*, which would have otherwise been April 30, 2013 due to the undisputed 1 Month Notice.

Therefore, pursuant to section 56 of the *Act*, **I grant** the landlord an order of possession for the rental unit effective not later than **two (2) days** after service of the Order on the tenant. This order may be enforced through the Supreme Court of British Columbia.

**I find** the landlord has succeeded with their application. Therefore, I award recovery of the filing fee in the amount of **\$50.00**, and **order** that this amount may be deducted from the tenant's security deposit by the landlord.

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*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: April 15, 2013

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Residential Tenancy Branch

