



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST EAGLE HOLDINGS LTD. C/O FIRST SERVICE RESIDENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act* and recovery of the filing fee.

The hearing was conducted by teleconference on October 4, 2017. Only the Landlord's representatives called into the hearing. They 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.

The Landlord's property manager, A.U., testified that the Tenant was served by registered mail on September 1, 2017. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. A.U. testified that the Tenant remains in the rental unit. She also stated that the Tenant is aware of the registered mail package and was aware of the hearing date.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 6, 2017 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me; however, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the 1 Month Notice to End Tenancy. The Notice was not dated, although the effective date was noted as August 31, 2017 (the "Notice"). Also introduced in evidence was a Proof of Service—Notice to End Tenancy confirming that the Notice was left in the Tenant's mail box or mail slot on July 27, 2017.

A.U. stated that they were requesting an end to the tenancy as the Tenant has created a "safety and security risk" for the property as people are coming in and out every day as he operates an AirBnB. Documents submitted by the Landlord confirm this has been an ongoing issue and that despite the Landlord's express communication that the Tenant cease operating this business the Tenant has continued. A letter dated August 31, 2017 from the Landlord provides a timeline and indicates the Tenant was first warned on June 27, 2017.

A.U. also testified that the situation has escalated since issuing the Notice such that the Tenant has threatened staff at the rental unit. A.U. testified that on August 19, 2017 the Tenant's AirBnB guests were leaving the rental unit. A.U. spoke to guests and asked that they give the keys to the building manager, H.A., which they did. Apparently when the Tenant spoke to the guests they informed him that they had given the keys to H.A. The Tenant then came to the building manager's unit and trapped the building manager, H.A., in her suite and threatened her.

S.N. also testified. He stated that he was the "on call building manager" on August 19, 2017 and at that time he was called by H.A. who had also sent several text messages asking for assistance. He testified that H.A. texted as follows:

“please call me ASAP, this is H., I have called the police, [the Tenant] tried to attack me”.

S.N. stated that he called H.A. and spoke to her on the phone. He said that she was crying and asked if he could come as soon as possible to help her. She stated that she had called the police but they still hadn't arrived yet.

S.N. stated that when he arrived at the building, he heard a pounding on H.A.'s rental unit door as he exited the elevator. He stated that he went to the property manager's rental unit, and saw the Tenant pounding on the door and putting his hand through the mail slot. S.N. stated that H.A.'s suite is located at the end of the hall next to the emergency exit. S.N. stated that the Tenant then went into the emergency exit and was screaming obscenities to H.A. including:

“you fucking bitch I am going to kill you if you don't give me my keys right now”.

S.N. stated that he asked the Tenant to leave the building and to discuss matters calmly to which the Tenant responded he would not leave the emergency exit and would sleep there if necessary.

S.N. stated that the police arrived at that time and H.A. opened her door. The police spoke with H.A. and she told them that she was scared and he was threatening her life. The police officer then went outside and spoke with the Tenant for approximately 5-10 minutes at which time they were able to convince him to leave the building. S.N. stated that to his knowledge the Tenant has not been charged.

Both A.U. and S.N. testified that H.A. was emotionally distraught and concerned about her safety and no longer works for the Landlord having resigned on August 25.

### Analysis

The Landlord applies for an Order of Possession pursuant to section 56 of the *Act* which provides as follows:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.

(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;

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(iii) put the landlord's property at significant risk;

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord's property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord's representatives and corroborated by their evidence.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenant has breached section 11 of the tenancy agreement which reads: "the tenant and his guests must use the rental unit for private residential purposes only and not for any illegal, unlawful, commercial or business purposes...". I further find that in operating an AirBnB in the rental building, the Tenant has jeopardized the safety and security of the other occupants of the rental unit in violation of section 28 of the *Act* and has negatively affecting the quiet enjoyment and safety of other tenants, the Landlord's staff and property, by allowing AirBnB guests to rent his rental unit.

I further find that in operating an AirBnB, the Tenant has put the Landlord's property at risk.

More importantly, I find that that the Tenant verbally threatened the building manager, H.A., and in doing so, has engaged in illegal activity that has adversely affected the safety and physical wellbeing of the property manager, who is also an occupant of the rental building.

As the effective date of the Notice has passed, I need not determine whether it would be unreasonable or unfair to wait until the effective date of the Notice.

**I therefore grant the Landlord their request for an Order pursuant to section 56, and find they are entitled to an early end to tenancy.**

### Conclusion

The Landlord is granted an Order of Possession pursuant to section 56 of the *Residential Tenancy Act*. The Landlord must serve the Order on the Tenant and the Order shall be effective immediately upon service on the Tenant. Should the Tenant fail to move from the rental unit, the Landlord may file and enforce the Order in the B.C. Supreme Court.

Having been successful in their application the Landlord is entitled to recover the \$100.00 filing fee. The Landlord is authorized pursuant to sections 38 and 72 of the *Act*, to retain \$100.00 from the Tenant's security deposit.

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: October 4, 2017

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Residential Tenancy Branch