



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENTICTON & DISTRICT SOCIETY FOR COMMUNITY LIVING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The witness they called was in a separate room until called to provide testimony from the landlord's office. As neither the landlord nor I had any difficulties calling into this teleconference hearing, I conclude that the call in-number and participant code provided in the Notice of Hearing were accurate. During the hearing, I also confirmed from the online Telus teleconference system that the landlord's representatives and I were the only ones who called into this teleconference.

As the landlord's representatives gave undisputed sworn testimony that they handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on January 25, 2018, I find that the tenant was served with that Notice in accordance with section 88 of the *Act*.

The landlord's representatives gave sworn testimony supported by written evidence that they handed the tenant the dispute resolution hearing package on February 13, 2018, and copies of the landlord's written evidence on February 15, 2018. I find that these documents were served to the tenant in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy began on July 1, 2017. Monthly rent is set at \$360.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$150.00 security deposit paid on June 23, 2017.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by February 28, 2018, the landlord cited the following five reasons for the issuance of the Notice:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Landlord representative BS (the landlord) gave sworn testimony at the hearing that the tenant confirmed to both landlord representatives on February 8, 2018 that he had not applied to cancel the landlord's 1 Month Notice. The landlord's representatives submitted into written evidence their account of their February 8, 2018 conversation with the tenant. This evidence maintained that the tenant described incidents involving him and some of those guests he had let enter his rental unit. Violent threats made by those guests towards the tenant and the tenant's own threats against them raised serious safety concerns for the landlord.

The landlord entered considerable undisputed written evidence with respect to the problems presented by the tenant and his guests to the safety of the landlord and others in this rental building. The landlord gave sworn evidence supported by written evidence

that he had been threatened on two occasions by guests allowed into this rental property by the tenant. The landlord also entered into written evidence copies of written statements from tenants in this building who were concerned about their safety and who also maintained that they had been threatened by the tenant's guests. One of these tenants testified at this hearing as to the accuracy of the written account of his interaction with the tenant who threatened to assault him one day in the common area of this building. A number of incidents involved people allowed into the rental unit by the tenant and who caused disturbances within common areas of this multi-unit building.

The landlord testified that the tenant's behaviours and actions, and particularly those of guests allowed on the premises by the tenant present serious safety concerns within this building, which houses many senior citizens and persons with mobility challenges. Both of the landlord's representatives testified that tenants in this building are fearful of the tenant and his guests and that there are legitimate safety concerns presented by allowing this tenancy to continue until such time as a hearing of an application to enforce the 1 Month Notice could be undertaken. They asked for an early end to this tenancy due to the threats issued and the safety concerns they expressed.

### Analysis

In this case, there is undisputed sworn testimony that the tenant's failure to apply to cancel the 1 Month Notice required the tenant to vacate the rental unit by February 28, 2018. While I have taken this information into account, the landlord's application has not alerted the tenant that they were seeking to end this tenancy on the basis of the 1 Month Notice. In the absence of any notice to the tenant that the landlord was seeking an end to this tenancy on the basis of the 1 Month Notice, I can only consider the landlord's application to end this tenancy early, which is outlined in section 56 of the *Act*.

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*

- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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 undisputed written evidence and sworn testimony of the landlord's representatives, I find that sufficient evidence has been provided to warrant an end to this tenancy for the reasons outlined in the first portion of section 56, as outlined above. I find that the tenant or occupants allowed on the rental property by the tenant have significantly interfered with or unreasonably disturbed other occupants in this multi-residential building. There is also sufficient evidence to demonstrate that the tenant and his occupants and guests have seriously jeopardized the health or safety or a lawful right or interests of other occupants in this building.

The second test to be met in order for a landlord to obtain an early end to tenancy pursuant to section 56 of the *Act* requires that a landlord demonstrate that "it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47" for cause to take effect.

I find that the landlord's representatives have supplied undisputed evidence regarding serious threats and concerns to the landlord and other tenants in the building that support the landlord's request to end this tenancy early. While many of these threats have been made by guests allowed into the rental property by the tenant, the tenant has been warned about such concerns and has failed to end their access to this multi-tenanted rental building.

Under these circumstances, I find that the landlord has established to the extent required that this tenancy should end without waiting for a consideration of an application to end this tenancy pursuant to section 47 of the *Act*. In coming to this

determination, I have also taken into account that an Order of Possession for cause could also have been obtained had the landlord applied under that section of the *Act* due to the tenant's failure to apply to cancel the landlord's 1 Month Notice within ten days of receiving the landlord's 1 Month Notice. The tenant's failure to take this action leads to the conclusive presumption that the tenancy ended on February 28, 2018, the effective date identified on the landlord's 1 Month Notice. I find that the landlord has provided sufficient undisputed evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlord.

As the landlord has been successful in this application, I allow the landlord's application to recover the filing fee from the tenant. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain this \$100.00 from the security deposit.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee by allowing the landlord to retain \$100.00 from the security deposit for this tenancy. The revised value of the security deposit currently retained by the landlord is reduced from \$150.00 to \$50.00.

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: March 08, 2018

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Residential Tenancy Branch