



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT  
COMMISSION 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* ("Act") for:

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

The landlord's two agents, landlord KW ("landlord") and "landlord MK," and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the property manager and landlord MK confirmed that he was the operations manager and that both had permission to represent the landlord as agents at this hearing. Three witnesses, "witness HT," "witness BB" and "witness JH" testified on behalf of the landlord at this hearing; the witnesses were excluded from the outset and testified individually after I heard from the parties first.

The hearing began at 11:00 a.m. and ended at 12:36 p.m. The tenant called in late at 11:10 a.m. I informed the tenant about what occurred in her absence, with me and the two landlord agents present in the hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

### Issues to be Decided

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and the landlord's witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on September 1, 2009. Monthly rent in the amount of \$550.00 is payable but the tenant's rent contribution is only \$275.00 due on the first day of each month. A security deposit was not paid for this tenancy. The tenant continues to reside in the rental unit.

The landlord seeks an early end to tenancy and an order of possession. The landlord also seeks to recover the \$100.00 filing fee paid for this application. The landlord testified that there was a knife situation involving one of the tenant's guests in the playground at the rental property, there has been an ongoing police presence at the rental unit due to the tenant's visiting guests, and there have been needles around the unit and the playground. The landlord claimed that there have been no criminal charges or convictions to prove any illegal activity against the tenant or her guests.

The landlord said that a 1 Month Notice to End Tenancy for Cause, dated April 26, 2018 ("1 Month Notice") was issued to the tenant regarding the above behaviour. The effective move-out date on the notice is May 31, 2018. A copy of the notice was provided for this hearing. The reasons on the 1 Month Notice are the following:

- *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;*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Witness HT testified that he was the building manager at the rental building. He said that on April 12, 2018, he observed one of the tenant's male guests flicking a four to five

inch bladed knife and throwing it in the dirt eight feet away from the playground. He said that he approached the male, who identified himself as a friend visiting the tenant, he asked the male to leave and the male left when asked. He said that another occupant called the police, so he did not do so. He explained that no one was harmed by the male while at the rental property. Witness HT maintained that the tenant has a flow of people in and out of the rental unit, which he finds unusual.

The tenant responded by stating that she was not at the rental property at the time of the above knife incident, she heard about it two days later, and she spoke to the young male who she is assisting as a support worker, who indicated that he was throwing the knife inside a fenced property.

Witness BB testified that she lives at the rental property and her son told her about an incident at the playground on April 18, 2018, where a male was restraining a female while another female was hitting the female that was being restrained. She said that all three of her children, including her son, witnessed the incident and came screaming to her, upset by the incident. She stated that four other children were with her children and she sent them home when she heard what happened. She claimed that her best friend called the police, she does not know whether any criminal charges or convictions were laid, the police spoke to her son, and her son is now terrified to play at the playground. She explained that she did not speak to any of the three people involved in the incident but she has seen them going in and out of the rental unit and she saw them do so after the incident. The tenant responded by stating that she has no knowledge of the above incident, as she was involved in carpet cleaning that day.

Witness JH testified that she witnessed the above fight in the playground but she did not know the date. She said that her two children told her that they saw a male grabbing a female, while another female was punching her repeatedly. She stated that her children were scared and upset but they were not hurt physically. She explained that the male involved in the incident was sleeping in a car in front of the tenant's rental unit. She maintained that there has been a lot of police presence at the tenant's rental unit.

Witness BB testified that her and her boyfriend were attacked verbally and threatened by two of the tenant's guests. She said that she did not call the police regarding this incident because they were already at the rental unit at the time of the incident. She said that she tried to "flag down" the police but was not able to do so. She said that there were no criminal charges or convictions laid, except for charges relating to death threats against the tenant's boyfriend. The landlord provided a copy of bail conditions

for uttering threats, stating that it was against the tenant's boyfriend, but all identifying information for those involved in the incident have been redacted by the landlord.

The tenant confirmed that she has stopped all guests from visiting her rental unit as of three weeks prior to this hearing date. She said that not all of her guests had phones so they would come by her unit to check on her without notice. She said that other occupants at the rental property often call the police for no reason, in order to report the tenant to the provincial housing authority. She said that she broke up with her boyfriend and he is not permitted to come to the rental unit as of January 2018, since he was charged with uttering threats in July 2017 and he was on probation.

### Analysis

I do not attach any weight to the redacted emails and bail conditions involving unnamed individuals, entered into written evidence by the landlords. The Supreme Court of B.C. held in *Stelmack v Commonwealth Holding Co. Ltd*, 2013 BCSC 342, that anonymous letters may not be relied upon owing to the high standard of procedural fairness owed to tenants facing a notice to end tenancy for cause.

Accordingly, without the authors of these documents in attendance at the hearing and without the names of the authors having been supplied by the landlord, there would be a fundamental denial of natural justice if I were to attach weight to allegations from unnamed individuals. The tenant is entitled to know the case against her so as to enable her to address the landlord's allegations. In accordance with the above Supreme Court of B.C. decision, I find that the landlord's redacted emails and bail conditions involving anonymous people, are inadmissible for this hearing. However, I have considered the testimony of the landlord and the landlord's witnesses at the hearing regarding the above incidents.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) **and** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

(a) *the tenant or a person permitted on the residential property by the tenant has:*

*(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;*

...

*(iv) engaged in illegal activity that*

...

*(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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it could not wait for a 1 Month Notice to take effect. The landlord did not provide copies of any police reports or charges filed against the tenant or her alleged guests for their behaviour regarding the above incidents at the rental property. Although I did not consider the bail conditions presented by the landlord, the tenant confirmed that her now ex-boyfriend was charged and on probation from an incident in July 2017, but stated that he is not permitted to attend at, nor has he attended at, the rental property since January 2018.

There were no charges or convictions relating to the knife incident on April 12, 2018. Witness HT confirmed that no one was hurt and he did not call the police. The male left the rental property when witness HT asked him to do so. The witnesses at the hearing who described the fight on April 18, 2018 assumed that they were guests of the tenant, while the tenant denied knowledge of the incident, as she was not present at the rental property during this time. No charges or convictions relating to this incident were proven by the landlord.

The tenant indicated that she stopped all guests from coming to her rental unit approximately three weeks prior this hearing date, which is after the 1 Month Notice was issued by the landlord. She has attempted to correct any complaints against her guests. I am not satisfied that the landlord has met its onus to end this tenancy early and that it would be "unreasonable" or "unfair," as per section 56(2)(b) of the *Act*, for the landlord to wait for a 1 Month Notice to take effect.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful at this hearing, I decline to award the \$100.00 application filing fee to the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

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: June 25, 2018

---

Residential Tenancy Branch