



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Vancouver Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession pursuant to section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and procedural matters

The landlord had a witness appear at the start of the hearing, referred to by initials JA. The witness was excluded with instruction that he be available to testify when called. I found it unnecessary to call the witness during the remainder of the hearing for reasons provided in this decision.

I confirmed that the tenant was duly served with the landlord's Application for Dispute Resolution and evidence. I also explained the hearing process to the parties and permitted the parties to ask questions of me and the other party.

The landlord's application was amended to reflect the correct ordering of the tenant's first and last name.

### Issue(s) to be Decided

Is it necessary or appropriate to order an immediate end of tenancy and provide the landlord with an Order of Possession under section 56 of the Act?

### Background and Evidence

The tenancy started on March 21, 2017 and the tenant paid a security deposit of \$780.00. The rent was originally set at \$1,550.00 per month and increased to \$1,560.00 starting April 1, 2018. The tenant is required to pay rent on the first day of every month.

The landlord filed this Application for Dispute Resolution and another Application for Dispute Resolution (file number referenced on the cover page of this decision) on June 19, 2018. The second Application for Dispute Resolution is set for hearing on August 14, 2018 and pertains to the landlord's request for an Order of Possession due to unpaid rent (the rent was eventually paid on July 3, 2018 but more than five days after a 10 Day Notice to End Tenancy for Unpaid Rent was served).

The landlord considers the tenancy to have ended on June 17, 2018 pursuant to the 10 Day Notice but filed the Application for Dispute Resolution that is before me on June 19, 2018 due to the landlord's obligation to protect its other tenants. The landlord's agent testified that complaints of a serious nature were received from other tenants concerning the tenant's conduct. One tenant in particular, referred to by initials JA, occupies a rental unit directly above the tenant and has been most significantly impacted by the tenant's conduct. JA provided written statements as to his experiences with the tenant that were provided as part of the landlord's evidence package. JA was also available to testify. In brief, JA described an incident on June 15, 2018 where the tenant came knocking on JA's door, appearing very agitated and holding a piece of lumber as though he may swing it. JA called the police and the police attended the property. As the police were leaving the tenant yelled profanities at the police. A few days later on June 21, 2018, JA heard the tenant yelling for help so JA called 911 and the police attended the tenant's unit. The police then came JA's unit and explained the tenant believes JA is spying on him with an infrared camera. At other times, the tenant was heard talking loudly to himself, appearing very agitated, swearing and banging on the ceiling or walls.

The tenant readily acknowledged that the events described by JA are reasonably accurate, and while the tenant acknowledged he was acting in a menacing way he said he would not characterize his conduct as violent. The tenant seeks to continue the tenancy. The tenant explained that he suffers from psychosis and since the incidents that took place in June 2018 he has been seeing his psychiatrist and mental health caseworker regularly. The tenant testified that his medication has been increased significantly and the tenant's mental health has improved greatly as a result. The tenant

stated that he is very confident that his chemical imbalance has been corrected and that a future incident is very unlikely. The tenant stated that he is able to feel an episode coming on and that if that happens again he has a plan in place to contact his psychiatrist immediately. The tenant offered to provide documentation from his mental health professionals to substantiate his position. The tenant stated he is prepared to apologize and share his diagnosis/treatment plan with the other tenants who have been impacted by his conduct, especially JA. The tenant also stated that if another episode were to occur he would move out of the rental unit at the end of the month of the incident on his own volition.

### Analysis

I am of the view that this case is rather unique in that the tenant readily acknowledged and took responsibility for his disturbing behaviour of the past and appears to have taken steps to rectify the situation and reduce the risk of such behaviour recurring. While the tenant was seeking an arrangement to have the tenancy continue, I observed the landlord's agent listening to the tenant's position and responding in a very professional, reasonable and kind manner. However, the landlord's agent stated that she was not in a position to make a commitment regarding continuing or reinstating the tenancy without first consulting the owner(s) of the property. Accordingly, I proceed to make a decision on this application.

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

- (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.

[My emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe circumstances.

Having read the statements of JA, and others, and having the tenant confirm that the written submissions are reasonably accurate, I accept that the tenant's conduct has been unreasonably disturbing to other tenants, especially JA. Therefore, I found it unnecessary to call JA to testify during the hearing.

Having heard from the tenant during the hearing, I found him to very open and honest, and I accept his testimony that he suffers from psychosis and the disturbing conduct was due to psychotic episodes. I heard the tenant say he has been under the regular treatment of mental health professionals since the incidents that took place in June 2018 and his mental health has greatly improved with increased medication and I accept that his submission that the likelihood of another psychotic episode is greatly reduced by the recent change in treatment. I also believed the tenant when he stated that he has a plan in place in the event he feels another episode about to occur and that he will move out on his own volition if he were to have another disturbing incident with a tenant at the property. For these reasons, I find the immediate or impending risk to the health and safety of other tenants, or unreasonable disturbance, is greatly reduced to the point an immediate Order of Possession under section 56 of the Act is no longer necessary. Therefore, I do not provide one to the landlord.

Despite declining to issue an Order of Possession with this decision, I find the landlord's application was warranted at the time it was filed and I award the landlord recovery of the \$100.00 filing fee paid for this application. I issue a Monetary Order to the landlord in the amount of \$100.00.

The hearing scheduled for August 14, 2018 remains as scheduled unless the parties reach a mutual agreement to continue or reinstate the tenancy and the August 14, 2018 hearing is cancelled by the landlord. As I informed the parties, should that occur the landlord should provide such an agreement in writing to the tenant.

### Conclusion

I have declined to issue an Order of Possession to the landlord under section 56 of the Act as I am of the view the health and safety of other tenants of the property is no longer in immediate or imminent danger and the likelihood of another unreasonable disturbance by the tenant has been greatly reduced with medical treatment.

I have awarded the landlord recovery of the \$100.00 filing fee and I provide the landlord a Monetary Order to recover this amount from the tenant.

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: July 17, 2018

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Residential Tenancy Branch