



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The Landlord applied for an early end to the tenancy, pursuant to section 56 of the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing and provided testimony. The Landlord also had two realtors and a witness attend the hearing to support him. The Tenants both attended with their lawyer. The Tenants confirmed receipt of the Landlord's application and evidence. The Landlord stated that he got an email from the Tenants with their evidence but the photos did not come through. Subsequently, the Tenants sent their documentary evidence by courier on April 23, 2019. The Landlord acknowledged receiving this evidence but said he did not get the package until April 24, 2019, a day before the hearing.

As stated in the hearing, the Tenants failed to serve their evidence in accordance with the rules of procedure. I note that email service is not an approved method of service under the Act, and when the Tenants sent their package on April 24, 2019, it was done late. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As such, the Tenants' documentary evidence will not be admitted in this hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issue identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlord stated that the relationship with the Tenants has degraded significantly after he served them with a 2-Month Notice to End Tenancy (the Notice). The Landlord stated that he is selling the house, so in March, he issued the Notice and things turned sour. The Landlord stated that the Tenant, J.P., has threatened to punch him in the face 4 times over the last month, and he fears for his safety. The parties disagree on when the Notice was served (March 10 vs March 17) but the Landlord stated that when he went to serve the Tenant with the Notice, J.P. raised his fist and threatened to punch him.

The Landlord had his witness, A.D., attend the hearing and corroborate his statements. A.D. was present with the Landlord when he attended the rental unit. A.D. stated she overheard the different physical threats from the Tenant and also saw him raise his fists at the Landlord in a threatening manner. A.D. took a video of a portion of this interaction, but stated she had only recorded some of it. A.D. also stated she was present when the Landlord had phone calls with the Tenant after they served the Notice.

The Landlord stated that when he was at the rental unit around the time he issued the Notice, the Tenant explicitly told the Landlord "I will break your face if you raise your voice at my wife". A.D. stated she heard this directly, but did not manage to capture this in the recording, as the recording was started part way through the interaction.

The Landlord stated that the Tenant has also threatened to damage the house, and leave his dogs locked up in the house for extended periods of time such that they will defecate

and urinate all over the floors and ruin the house. The Landlord's witness, A.D., stated she heard the Tenant say this when she was next to the Landlord who had the call on speakerphone.

The Landlord stated that on March 22, 2019, he had a phone call with the Tenant, J.P., where he threatened to burn the house down. A.D. stated she was present for this call as well, and attested to the fact that the Tenant said this. The Landlord also pointed to a text message provided into evidence from the Tenant, where the Tenant said:

*“but you have to guarantee that you don’t cross my path again because I’m finding to punch you in the face”*

The Tenant, J.P., stated that his phone must have auto-corrected his text because he meant to tell the Landlord to shut his mouth. The Tenant denies that he has ever threatened the Landlord or done any damage to his house.

The Tenants stated that the Landlord's allegations are fabricated to expedite their eviction, so he can sell the house. The Tenants stated that “words were exchanged” but there were never any threats. The Tenant stated that the video shows that he did not threaten in an aggressive manner. The Tenants stated that they have been accommodating with the realtors as the house sale has unfolded.

The Landlord denies any bad faith and says this whole situation has escalated because he is selling his house.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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 to take effect.

The Landlord has stated that the Tenant has threatened to punch him in the face 4 times, threatened to damage his house, and acted in an aggressive manner. The Landlord provided a copy of a text message from the Tenant, J.P. J.P. stated that his phone must have auto-corrected improperly because he meant to tell the Landlord to shut his mouth. When looking at this text message, I note it is not without grammatical errors. However, the Tenant did not sufficiently explain, in a plausible way, how his phone could auto-correct "*guarantee that you don't cross my path again because I'm finding to punch you in the face*" to "*shut your mouth*". This does not have the ring of truth, as these two phrases/comments are significantly different. On a balance of probabilities, I find it more likely than not that the Tenant intentionally mentioned a punch in the face, within the context of his interactions with the Landlord.

Further, I note the Tenants have both re-iterated that they did not threaten the Landlord or his property. The Tenants feel the Landlord is fabricating this behaviour to expedite their eviction. In contrast to this, the Landlord stated that he has received several threats, both in person, and on the phone. I note the Landlord brought a witness with him to the hearing, who provided clear and detailed testimony regarding what she heard. I note she specifically stated that she heard J.P. threaten to break the Landlord's face, which triggered her to start the recording. She also heard the other threatening phone calls from the Tenant. I find A.D.'s testimony was clear and compelling and was internally consistent with the Landlord's statements (including the text message). When weighing the two versions of events, I find I prefer the Landlord's evidence, and I find it more likely than not the Tenant inappropriately threatened the Landlord.

I find the Tenant's behaviour is significant and severe enough as to warrant an early end to the tenancy, pursuant to section 56 of the Act. I find the Tenant's verbal threats of violence pose an immediate and severe risk to the Landlord. As such, I find the Landlord is entitled to an order of possession.

### Conclusion

The Landlord has met the burden to prove the tenancy should end early.

The Landlord is granted an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: April 26, 2019

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Residential Tenancy Branch