



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC OLC (tenant); ET FFL (landlord)**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord’s agents, including EM, the caretaker of the building in which the unit is located, (“the landlord”) appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty-two minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants were provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 4, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on November 9, 2019

The landlord provided the Canada Post Tracking Number in support of service to which reference is made on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on November 9, 2019.

### *Preliminary Issue*

Rule 7.3 of the Rules of Procedure provides as follows:

***7.3 Consequences of not attending the hearing*** – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the tenant did not attend the hearing and in the absence of any evidence or submissions on the tenant's behalf, I order the tenant's application dismissed with leave to reapply.

Leave to reapply does not constitute an extension of any applicable time limit.

### Issue(s) to be Decided

Is the landlord entitled to the following?

- An order for early termination of tenancy pursuant to section 56;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

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

The landlord testified that the tenancy began on February 1, 2019 and is ongoing. The rent is \$925.00, and the tenant provided a security deposit at the beginning of the tenancy in the amount of \$462.50 which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord testified the landlord Issued a One Month Notice to End Tenancy for Case ("Notice") dated and served upon the tenant on October 28, 2019. Service took place by posting to the tenant's door, thereby effecting service under section 90 three days later, that is, on October 31, 2019. The effective date of the notice was November 30, 2019. The grounds for the issuance of the Notice are stated therein as follows:

- The tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of the grounds stated in the Notice, the landlord provided testimony that, beginning in April 2019, the tenant behaved unacceptably and disturbed the residents of the building in which the unit was located by "extremely vulgar and foul language".

At that time, the tenant appeared to take offence to the ethnicity of the occupants of one of the units ("the first targeted occupants"). Both inside and outside the building, the tenant would yell racial epithets at the first targeted occupants. The landlord testified the tenant could be heard by many of the building occupants screaming at them that they "should go home" and that "had no business being in the country".

The landlord testified the tenant called the RCMP to demand the first target tenants be required to move out of the building. The landlord provided a police incident report in support of this testimony.

The landlord further testified that after this, the tenant then turned her attention to a couple of a different ethnicity living in another unit, ("the second targeted occupants"). The tenant's racist behaviour was repeated as the tenant yelled offensive words and racist opinions within and outside the building at the second targeted occupants. On November 22, 2019, the tenant accelerated her abusive and offensive behaviour by telling the female of the second targeted occupants, who was expecting a child, that she, the tenant, "hoped the baby died".

The testimony of the caretaker EM who lives in the building supported the above testimony.

The landlord repeatedly warned the tenant to stop her unacceptable behaviour but the tenant has failed to do so.

The landlord testified that many occupants of the building have stated that it is

impossible to continue living in the building given the behaviour of the tenant; they have stated their intention to vacate the building forthwith if the tenant is permitted to continue living there.

The landlord asserted that the following provisions of section 56 apply:

*The tenant has*

- a. [...] (i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*

*[...]*

*(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.*

The landlord requested reimbursement of the filing fee.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to 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 of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

The section states:

#### ***Application for order ending tenancy early***

**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.*

For me to grant an order under section 56(1), I must be satisfied as follows:

*56 (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.*

Four agents of the landlord, including the caretaker who lives in the building, attended the hearing on behalf of the landlord; they provided compelling and credible evidence in significant and disturbing detail.

I accept their evidence that the tenant has inexplicably targeted two families living in the building beginning in April 2019 and continuing to this day. I accept the landlord's description as accurate and convincing that the tenant screamed racial epithets at these targeted families, the diatribes being audible to most or all residents of the building.

Based upon the uncontradicted evidence of the landlord, I find the tenant has verbally and inexcusably attacked and harangued occupants of the building. I find she has ranted in a public and racist manner against these families. I find the behavior was repeated multiple times and that the tenant would not cease her appalling conduct after multiple warnings.

I find the tenant's behavior to go beyond the threshold set out in the Act and it constitutes hateful, intolerable and egregious conduct. I accept the landlord's testimony that the conduct is of a nature that they reasonably do not want to continue one more day. I find it reasonable and believable that the other occupants of the building are upset and "in an uproar".

I find the landlord's evidence meets the burden of proof on a balance of probabilities. I find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that it is unreasonable, or unfair to the landlord or other occupants of the building, to wait for a notice to end the tenancy under section 47 to take effect.

In summary, I find that the landlord's application satisfied all requirements under section 56(2)(b) of the *Act*. I therefore grant the landlord an order of possession effective on two days' notice. I further grant the landlord reimbursement of the filing fee.

### Conclusion

The landlord will be given a formal order of possession which must be served on the tenant. If the tenant does not vacate the rental unit within two days of service of this order, the landlord may enforce this order in the Supreme Court of British Columbia.

I further grant the landlord a monetary order in the amount of \$100.00. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court to 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: November 25, 2019

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Residential Tenancy Branch