



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

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

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

The two tenants (male and female) did not attend this hearing, which lasted approximately 71 minutes. The landlords' agent LF ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the two "landlords" named in this application and that she had permission to speak on their behalf. Five witnesses provided affirmed testimony on behalf of the landlords at this hearing.

The landlord testified that the two tenants were separately served with the landlords' application for dispute resolution hearing package on May 3, 2020, both by way of registered mail to the rental unit where the tenants are still residing. The landlords provided two Canada Post receipts and tracking numbers with this application. The landlord confirmed both Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the Act, I find that both tenants were deemed served with the landlords' application on May 8, 2020, five days after their registered mailings.

### Issues to be Decided

Are the landlords entitled to an early end to tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

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

The landlord stated the following facts. This month-to-month tenancy began on December 1, 2019. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlords continue to retain this deposit. No written tenancy agreement was signed by the parties, only a verbal agreement was reached. The tenants continue to reside in the rental unit.

The landlord testified regarding the following facts. There have been problems with the tenants since the beginning of this tenancy. A notice to end tenancy for unpaid rent was given to the tenants in January 2020, after which a Residential Tenancy Branch ("RTB") hearing occurred on March 25, 2020, and an order of possession was granted to the landlords on March 30, 2020. This order of possession was not enforceable as of March 30, 2020, because of the Province's moratorium on evictions during the covid-19 pandemic. The landlords opted to take the easier, quicker route in pursuing an end to tenancy for unpaid rent, thinking they could get a quicker RTB hearing date. However, the landlords had to wait months for the first RTB hearing date in March 2020 and applied again for this emergency end to tenancy on April 3, 2020, not receiving a response from the RTB until April 30, 2020, with a notice for a participatory hearing.

The landlord stated the following facts. There have been numerous complaints from resident occupants at the residential property who have called police multiple times. These occupants have been threatened by the tenants and their guests, and they are fearful for their lives. No police reports were accessible by the landlords, as no criminal charges were laid. The tenants caused damages to the front entry doors, trampled the landscape, and damaged the framing at the residential property by allowing their occupants to scale the ground level to their patio. Photographs, invoices and letters were submitted by the landlords. No One Month Notice to End Tenancy for Cause ("1 Month Notice") was given to the tenants, as they are not permitted by government legislation during the pandemic.

Witness NA stated the following facts. She is the landlords' realtor and is showing the rental unit in order to sell it. She has noticed a number of extra occupants coming in and out of the tenants' rental unit. There was extra furniture, personal items, and the place was a mess. The tenants have been abusing their rental unit. The floorboards were taken out, a mattress was up against the wall, and there was a carpet on the balcony, which is against the bylaws. She observed the tenants dealing drugs from the back of their cars, large guys who look intimidating coming in and out of the rental unit, and no respect for the rental unit or the covid-19 pandemic. There have been no requests for showings recently, but the above events occurred when she was showing the unit in January, February and early March 2020.

Witness PCB testified the following facts. She is the strata president at the residential property and a resident occupant who lives across from the tenants. In February 2020, she was confronted by the male tenant, who accused her of listening in to his conversations, while she was cleaning her front door. She also overheard the male tenant telling his guests that she was listening to his conversations. She felt threatened by his behaviour, so she sent a text message to the undercover police officer at the residential property, who told her to stay out of the hallways and report any direct threats to the police. The undercover police officers are stationed at the residential property and watch the tenants and their guests. She called the police five times regarding the tenants, she found out that six of the tenants' associates were arrested, she offered her rental unit to the police to conduct surveillance on the tenants, and she does not know if any criminal charges were laid. On the day before this hearing, she was sitting on her balcony and the male tenant was "haranguing" her from the parking lot, calling her names and making fun of her.

Witness BH stated the following facts. She is a resident occupant who lives at the residential property. On April 19, 2020, one of the tenants' guests was yelling at her from the deck below and later knocked and yelled at her door, asking why she called the police. She then called the police because she felt threatened, this guest left, and he was arrested the week before because he was high on drugs and running around the lawn. She has called "police designates" multiple times regard the tenants but she does not know the outcomes of these calls. The tenants' guests have coughed on her at the front door and the stairs at the residential property, in narrow spaces, as she is not using the elevators during this covid-19 pandemic.

Witness MH testified regarding the following facts. He is a resident occupant who has been living at the residential property for 31 years. He lives one floor above and two units over from the tenants. He has seen over 100 guests coming in and out of the tenants' rental unit, they hang out there at night, and they throw garbage everywhere. They do not keep their two-metre distance in the hallways at the residential property, as required during the covid-19 pandemic. The tenants' guests call him and knock at his door, to gain access to the residential property, which he does not grant. He saw a girl being boosted up to the tenants' balcony from below, he thought it was a break and enter crime, so he called the police. He has encountered the tenants' guests, who are drug-addicted and cannot talk properly. The tenants' guests had a bowel movement at the top of the stairs at the residential property and the hazmat team was called in to clean it up. The landlord pointed to an invoice provided, to confirm same.

Witness DL is the strata manager at the residential property and stated the following facts. The tenants have caused damages to the building, including to the two side emergency doors and the locking mechanisms of the front doors. The tenants' guests left human excrement in the stairwell at the residential property. He has received a "steady barrage" of email complaints about the tenants and their guests. He was asked by the strata counsel to call the police regarding the tenants. He has no police powers, so he tells residents at the residential property to call the police if they have any issues with the tenants.

### Analysis

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlords 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 landlords must show, on a balance of probabilities, 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...*

On a balance of probabilities and for the reasons stated below, I find that the tenants significantly interfered with and unreasonably disturbed the landlords' agents and the other occupants at the residential property.

I also find that the landlords' application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlords provided sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to take effect. No 1 Month Notices can be issued during the present time due to the covid-19 pandemic and Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020.

I find that the tenants caused a number of incidents causing significant interference and unreasonable disturbance to the landlords' agents and other occupants at the residential property. I accept the landlords' documentary and testimonial evidence, which was undisputed at this hearing.

The landlord and five other witnesses who either reside at or work at the residential property provided affirmed testimony, that the tenants and their guests engaged in disturbing behavior, causing fear, intimidation, and unsafe health and safety risks to them. The police attended at the residential property multiple times, as a result of calls from concerned occupants and strata members at the residential property. I accept the testimony of four of the five witnesses who indicated that they called the police regarding the tenants and their guests, the police told them to avoid the tenants and their guests, they were informed to call the police for issues, undercover police officers were placed at the residential property in order to watch the tenants, and arrests were made of associates of the tenants.

I find that the landlords provided sufficient evidence regarding the urgency and seriousness of this situation. I accept the evidence of the landlords' witnesses, who indicated that the behaviour of the tenants has been ongoing since January 2020 and continues to present, as recently as the day before this hearing. I accept the evidence of the landlords' witnesses who reside in the residential property, that they have been coughed on by the tenants' guests who stated they were sick, they were yelled at and taunted by the tenants and their guests, they have avoided using elevators and laundry facilities in the building, and they have observed drug needles and crack pipes around the stairwells and hallways of the building from the tenants and their guests. The hazmat team was called to clean up fecal matter that was spread around the walls of the building by the tenants' guests and the landlords provided an invoice for this cleanup by the landlords. The tenants continue to have large gatherings, despite the covid-19 pandemic and state of emergency measures enacted.

I find that the health and safety of the occupants at the residential property is at risk, particularly given the covid-19 pandemic. B.C. government and health authorities have ordered physical distancing between people, small and minimal group gatherings, and no open coughing or sneezing on others, particularly if people are sick. Special measures such as restricted access to tenants' rental units by landlords, have been made in Ministerial Order M089.

While the landlords were able to secure an order of possession for unpaid rent at a previous RTB hearing on March 25, 2020, it is not enforceable during the state of emergency, since they received it on March 30, 2020, the date that Ministerial Order M089 took effect. The landlords had to wait for an RTB hearing date for their unpaid rent application and again when they applied for this current emergency application, through no fault of their own, but due to RTB administrative wait times.

The landlords provided documentary evidence, in the form of letters, photographs, and invoices showing the incidents described above. I have not considered the landlords' redacted letters or information, as the tenants do not have access to or notice of same. I have only considered the unredacted evidence submitted by the landlords. The tenants did not appear at this hearing or provide any documentary evidence for this hearing.

Accordingly, the landlords' application for an early end to tenancy is allowed. The landlords are granted an order of possession effective two (2) days after service on the tenants.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenants. I order the landlords to deduct \$100.00 from the tenants' security deposit of \$600.00. The remainder of the tenants' security deposit of \$500.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

### Conclusion

The landlords' application is allowed. I grant an Order of Possession to the landlords effective two (2) days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to deduct \$100.00 from the tenants' security deposit of \$600.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$500.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: May 25, 2020

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Residential Tenancy Branch