



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **ET, FFL**

### **Introduction**

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

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

The landlords attended with the lawyer PR (“the landlords”). They had opportunity to provide affirmed testimony, present evidence, call witnesses and make submissions. The hearing process was explained.

### *Preliminary Issue 1 – Service of Notice of Hearing and Application for Dispute Resolution*

The landlord testified that the tenant was served with the Notice of Hearing and Application for Dispute Resolution in compliance with the *Act*.

The landlord explained that the tenant and the three members of the family who live in the unit were served on May 14, 2020 when each was hand delivered copies of the documents. The landlord provided uncontradicted testimony that the tenant lives with his wife and two adult children.

The landlord also served the tenant by registered mail sent on May 15, 2020 and deemed received five days later, on May 20, 2020, pursuant to section 90. The landlord

provided the tracking number for the registered mail in support of service to which reference is made on the first page.

The Director's Order of June 26, 2019 states that a party to an application for dispute resolution set down under Rule 10 of the Rules of Procedure for an expedited hearing date that is between 12 and 16 days after the date the application is made must serve their material as set out in paragraph 2 of the Order.

Paragraph 2(b) states that the party may attach a copy to a door or other conspicuous place at the address at which the person resides.

This application is an application under Rule 10 as it is an application for an expedited hearing to be heard on short notice to the Respondent. Further to Rule 10, section 2(b) of the Order of June 26, 2019 and in consideration of the undisputed testimony of the landlord, I find the landlord served the tenant as required on May 14, 2020.

*Preliminary Issue 2: Agent attending for Tenant*

JD attended the first 14 minutes of the hearing. JD explained that she was representing the tenant. JD testified as follows:

1. JD met the tenant the day before the hearing who acknowledged service of the Notice of Hearing and Application for Dispute Resolution; the tenant provided JD with copies of all documentary materials filed by the landlord;
2. the tenant informed JD he was unable to attend the hearing because of his work schedule;
3. the tenant requested JD to attend the hearing on his behalf;
4. the tenant did not provide JD with written authorization to attend as his agent;
5. the tenant did not submit any written authorization for JD to appear as his agent.

The landlord objected to JD attending on the tenant's behalf without proof of authorization. The hearing was put on hold for two minutes and JD was given the opportunity to call the tenant. Upon reconvening, JD reported that she spoke with the tenant who advised her that he was still unable to attend the hearing and could not call in to provide testimony or authorization for JD to act on his behalf.

Rule 6.8 of the Rules of Court provides:

### **6.8 Proof of authority to act**

*The arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.*

#### *Conclusion*

Considering the Rules, the testimony and the circumstances of the matter, I find that JD is not permitted to attend the hearing as agent for the tenant in the absence of any proof of appointment.

Accordingly, 17 minutes after the hearing began, JD left the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to the following:

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

#### Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on September 1, 2019 for monthly rent of \$2,450.00 payable on the first of the month. The tenant provided a security deposit of \$1,225.00 which the landlord holds. The tenant is currently in arrears of rent for four months.

The landlord submitted a copy of the signed tenancy agreement which is for a one-year fixed term. He explained that the tenant lives in the main area of a residential building and PS, called as a witness, lives in the basement unit with her child.

The landlord and the witness PS provided testimony which is summarized as follows:

1. The landlord has received multiple complaints regarding the tenant, such as a noise complaint from the municipality dated March 8, 2020, a copy of which was submitted by the landlord as evidence;
2. PS said she lives alone in the unit with her child;

3. Shortly after midnight on May 11, 2020, the tenant and his adult son tried to forcibly gain access to PS's apartment during which they broke the door jamb (the door frame) and smashed beer bottles on the floor of the exterior of PS's door before leaving;
4. PS said the sound of the attempted forced entry woke her and she was terrified for her and her child's safety; she called the police who attended;
5. A police incident report number was submitted as evidence;
6. PS contacted the landlord right away;
7. The landlord immediately called the tenant; the tenant was angry and upset;
8. The tenant told the landlord he was going to "shoot" PS, "shoot at the landlord's house" and "burn down the building"; the landlord reported these threats to the police;
9. The tenant phoned the landlord in the ensuing hours between 1:30 AM and 5:30 AM on May 11, 2020 and left several recorded messages, all in Punjabi, two of which were submitted as evidence;
10. In these messages translated by the landlord, the tenant repeated the threats to shoot PS and the landlord as well as burn down the building in which the unit is located;
11. The landlord brought an application for early termination of the tenancy on May 13, 2020;
12. The landlord attended at the unit on May 14, 2020 to serve the documents and was verbally assaulted by the tenant's wife and adult son as a result of which the landlord fled and retreated to safety in a locked car;
13. The landlord is afraid the tenant will kill PS, the landlord or the landlord's family;
14. Both the landlord and PS said they are afraid of the tenant who is of imposing size; they fear for their lives and safety.

Following service of the Notice of Hearing and Application for Dispute Resolution on May 14, 2020, the tenant has cut the breaker in the house, depriving the occupant PS of electricity for a time, played loud music at all hours disturbing PS who works shift work as an essential worker during the State of Emergency, and warned the landlord, "I dare you to get us out".

The landlord requested an Order of Possession based on section 56 of the Act as follows:

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;*
- (iii) put the landlord's property at significant risk;*

The landlord stated that it was unreasonable or unfair to the landlord and the downstairs occupant to wait for a notice to end the tenancy under section 47 (landlord's notice).

The landlord requested an Order of Possession effective immediately.

### Analysis

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 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 to establish on a balance of probabilities that they are entitled to an order for an early end of the tenancy.

To end a tenancy early, the landlord must prove that the tenant has done something contrary to section 56 **and** that it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause ("One Month Notice"). Section 56 of the Act provides as follows [emphasis added]:

### ***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.*

*(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*

*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.*

The landlord relied primarily on sections 56(2)(a)(i)(ii) and (iii), that is, that *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and put the landlord's property at significant risk;*

The landlord gave candid, forthright, credible evidence supported by photographs and a police incident report number which established that the tenant attempted to gain forcible entry to the apartment occupied by PS, a single mother with a child, who was terrified. The landlord was believable in describing the threats received by the landlord and the witness; I accept the landlord's evidence that the tenant has threatened to kill PS and the landlord and burn down the building.

I have given significant weight to the oral testimony of the landlord which I find was supported in all key aspects by documentary evidence and the testimony of PS, the downstairs occupant. PS was a believable witness in describing the events, her terror at the attempted break in, and the fear for her life and that of her child.

I find the landlord and the witness PS have a justified fear for the personal safety at the hands of the tenant.

Considering the testimony and evidence, I accept the landlord's testimony supported by the witness PS and find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and put the landlord's property at significant risk.

I find that the landlord provided sufficient evidence that it would be unreasonable to wait for a hearing for a One Month Notice, as the testimony and evidence presented by the landlord demonstrated a significant risk of injury to the persons of the landlord and the witness PS. I believe the credible and reasonable testimony of the landlord and the witness PS that they have a fear of imminent harm.

Given the nature of the tenant's threats against the landlord and PS, I find it would be unreasonable and unfair to PS and the landlord to wait for a hearing on a One Month Notice. On a balance of probabilities and for the reasons stated above, I find that the landlord's application satisfies all requirements under section 56 of the *Act*.

Accordingly, I allow the landlord's application for an early end to this tenancy and an order of possession will be issued effective on two days notice.

During the hearing, I cautioned the landlord and the witness PS to take all reasonable care to protect their safety. I advised the landlord and PS to seek the protection and services of the police and to consult RTB about safety measures going forward. The landlord's lawyer, the landlord and the witness PS all agreed to maintain close contact with the police and RTB to assure their well-being.

I grant the landlord a monetary award for reimbursement of the filing fee of \$100.00.

Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **at 11:00 AM on June 2, 2020**. This Order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The landlord is entitled to a monetary order in the amount of **\$100.00**. This order must be served on the tenants. If the tenant fails to comply with this order the landlord may file the Order to be enforced as an Order of the 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: June 02, 2020

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Residential Tenancy Branch