



# 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 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 landlord's agents LH and LA attended the hearing ("the landlord") and had the opportunity to call witnesses and 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 10 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 tenant was provided.

The landlord testified the landlord served the Notice of Hearing and Application for Dispute Resolution by posting on the tenant's door on August 11, 2020, thereby effecting service 3 days later, on August 14, 2020. The landlord submitted a signed and witnessed Proof of Service form in RTB form # 9.

Pursuant to the landlord's testimony and documentary evidence, I find the landlord served the tenant according to the Act.

### Issue(s) to be Decided

Is the landlord entitled to an Order for Early Termination of the tenancy and reimbursement of the filing fee?

### Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing.

The tenancy began on August 1, 2020 for a fixed term of one year. A copy of the tenancy agreement signed by the parties was submitted. The unit is an apartment in a multi-residential building containing 192 suites. The agreement sets out monthly rent of \$1,700.00 payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$850.00 which the landlord holds.

The landlord testified that during the morning of August 7, 2020, the tenant approached the assistant residence manager SS employed by the landlord. The tenant wrongfully alleged the unit had bedbugs.

The tenant picked up a chain and hit SS over the head causing bleeding. The tenant then struck SS two more times on the torso while SS tried to escape. The tenant pursued SS while the tenant screamed. The police were called by an occupant of the building and seven police cars attended. There is an ongoing police search and the tenant has not been located or apprehended.

The landlord submitted photographs of the injuries incurred by the staff member including bleeding from a scalp wound and significant torso bruising. The assault was witness by an occupant of the building whose written statement was submitted. The police file number and name of the investigating officer were submitted.

The landlord testified that all staff are frightened of the tenant and will not wear their uniforms to work in case they are identified by the tenant and similarly assaulted. The landlord requested an Order of Possession and reimbursement of the filing fee.

### Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter 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 he is 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***

**Section 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
  - (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.

The landlord relied on section 56(2)(a)(i) and (ii) that is, that the tenants have:

- (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;*

*Policy Guideline 51 – Expedited Hearing* provides guidance on the issuance of Orders of Possessions in these circumstances. The Guideline states in part:

*Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.*

*The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).*

Based on a review of the testimony and evidence, and taking into account the *Act* and the *Guideline*, I find that the landlord has met the burden of proof on a balance of probabilities that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I also find the landlord has met the burden of proof on a balance of probabilities that it would be unreasonable, or unfair to the landlord to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

In reaching this conclusion, I have given significant weight to the testimony, evidence and photographs submitted by the landlord. The landlord was a candid, forthright, and credible witness whose testimony was supported by photographs and other documentary evidence establishing that the tenant attacked and harmed one of the landlord's staff members. I accept the landlord's testimony as a reasonable interpretation of events that there is likely criminal charge to result from the incident and there is justified fear of assault to other staff.

I find the landlord has established entitlement to an order for early termination of tenancy and an Order of Possession effective immediately.

Accordingly, I grant an Order of Possession ending the tenancy effective two days after service on the tenant.

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As the landlord has been successful in this application, the landlord is entitled to reimbursement of the filing fee in the amount of \$100.00 which the landlord may deduct from the security deposit.

### Conclusion

I grant the landlord an Order of Possession effective two days after service on the tenants.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia 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: August 25, 2020