



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

In this application, the landlords request an order ending the tenancy early and for an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). In addition, they seek recovery of the application filing fee under section 72 of the Act.

The landlords filed their application for dispute resolution on October 3, 2020 and a dispute resolution hearing was held on October 20, 2020. The landlords, two witnesses for the landlord, and the tenant attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties. It should be noted that the tenant did not dial into the hearing until 9:36 AM, at which time one of the landlords was providing his testimony.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. As such, testimony regarding well-water quality issues will not be reproduced herein.

### Issues

1. Are the landlords entitled to an order under section 56 of the Act?
2. Are the landlords entitled to recovery of the filing fee under section 72 of the Act?

### Background and Evidence

The tenancy in this dispute started on March 1, 2020. Monthly rent is \$825.00, and the tenant paid a security deposit of \$400.00. A copy of the written Residential Tenancy Agreement was submitted into evidence by the landlords.

The reason for the landlords filing this application is as follows (reproduced as written in the landlords' application, tenant's name redacted):

Since being served to be evicted on the 31st of October, [tenant]'s behavior has been increasingly erratic, vindictive and hateful. [Tenant] began with harassing my family & my in-laws with being continuously loud and belligerent between the hours of 11am and 4am in the morning, purposely leaving harmful garbage on her front porch to poison our pets, she has attempted vandalizing of our personal vehicles and now has physically assaulted me. I am fearful for the safety of myself and my family.

It should be noted that the landlords previously obtained an order of possession in a dispute resolution hearing (with a different arbitrator) on September 14, 2020. That order of possession goes into effect on October 31, 2020.

The landlord (E.Y.) testified that the tenant's erratic behavior has escalated since the hearing on September 14, 2020, which is also the date on which the landlords served the tenant with the order of possession. The landlords had to put up security cameras on the property.

On October 3, 2020, the landlord testified that he found nails and screws near his vehicle, "placed where the tires would've been." There is video footage submitted into evidence which purports to show that, on September 25, 2020, the tenant went by the recycling and was observed to throw these items down. At 1:08:15 AM in the video, the tenant, with her right arm, appears to throw something under the rear of the pick-up truck's back tires.

The landlord confronted the about the leaving of the nails and screws, which the tenant denied having done, and told the tenant that he was phoning the police. At that point, the tenant turned around "attempted to hit me on my face." The landlord raised his arm in self-defence and then called the police. The tenant struck the arm, which was injured by the set of keys that the tenant had held in her hand. A police report was filed but the police did not lay charges; however, the police purportedly said that the situation is likely to escalate. In support of this aspect of the landlord's testimony a photograph of the landlord's right arm, with visible surface abrasions and puncture wounds, was submitted into evidence. A copy of the investigating officer's business card, along with a police report file number, and a photograph of a bag containing the nails and screws was also submitted.

The remainder of the testimony from the landlord and his witnesses dealt with an issue involving the alleged leaving of chicken bones outside the rental unit, where the landlords' dog has access to it. In her rebuttal, the tenant denied having left them purposely to harm the dog, and that she loves the dog.

In the tenant's rebuttal, she stated that "this assault is not true." The tenant then testified about the well-water quality issues that apparently lead to the acerbic relationship between the parties. According to the tenant, the landlords have harassed her constantly, remarking, "they picked on me after I asked them to do a well-water test."

She denied having put the nails down on the road behind the vehicle and denied striking the landlord. Rather, she explained that the landlord "was right there in my face." The landlord was apparently spitting on the tenant and following me around. She had meant to hit the phone out of the landlord's hand, because she did not want him filming her. "I did not assault him," she reiterated.

In his rebuttal the landlord submitted that while the tenant can deny leaving nails and screws to damage his vehicle, the video evidence proves otherwise. As for the assault, the landlord explained that he was no more than five feet away from the tenant and was not in her face. Moreover, he was holding the phone with his left, hand, while it was his right arm which sustained injuries.

### 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.

#### **1. Are landlords entitled to an order under section 56 of the Act?**

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 if 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.

In order for me to grant an order under section 56 (1), I must be satisfied 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, 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.

In this case, the assault allegedly occurred after the landlord confronted the tenant about throwing nails and screws under the rear of the truck. The video is clear, and I find based on carefully reviewing the video that the tenant indeed threw something under the rear of the truck. The landlord's testimony regarding finding screws and nails under the back of the truck, including the photograph of said screws and nails, is consistent with the evidence of what is depicted in the video. Further, the photograph of the injuries sustained to his arm are consistent with a physical application of force and that could have only occurred during an assault. Taking all of the parties' testimony and the landlord's photographic and video evidence into consideration, I find the landlord's testimony and version of events to be more persuasive than the tenant's testimony.

Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving that the tenant both (1) put the landlords' property (the truck) at significant risk, by deliberately placing nails and screws under the truck, and (2) seriously jeopardized the health and safety of the landlord by assaulting him with keys in hand.

Given the circumstances, I further conclude that it would be unreasonable to the landlords to wait for a notice to end the tenancy under section 47.

Pursuant to section 56 of the Act, I hereby order that the tenancy is ended effective 48 hours from the date that this Decision is received by the landlords. Further, I grant the landlords an order of possession which must be served on the tenant.

## **2. Are landlords entitled to recovery of the filing fee under section 72 of the Act?**

In respect of the landlords' claim for recovery of the filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful, I grant their claim for reimbursement of the filing fee.

### Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenant. Should the tenant fail to pay the landlords the amount owed, the landlords may file, and enforce, the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 20, 2020

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Residential Tenancy Branch