



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated August 19, 2020.

The Landlords, M.P. and R.P., appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlords, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlords.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing, the Landlords were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served the Tenant with the Notice of Hearing documents in person after an inspection on August 19, 2020. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlords in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlords provided their email address in the Application and confirmed this in the hearing. They also confirmed their understanding that the Decision would be emailed to the Landlords and mailed to the Tenant at the rental unit address, as the Landlords did not have an email address for the Tenant. I advised the Landlords that any Orders would be sent to the appropriate Party.

### Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?

### Background and Evidence

The Landlords confirmed that the periodic tenancy began on November 14, 2018, with a monthly rent of \$850.00, due on the first day of each month. The Landlords said that the Tenant paid them a security deposit of \$425.00, and no pet damage deposit. The Landlords confirmed that they still hold the security deposit.

The Landlords submitted a copy of an Order of the Director that arose out of another hearing between the Parties. This Order states:

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession based on a mutual agreement to end the tenancy.

Both parties appeared. During the hearing the parties agreed to settle this matter, on the following conditions:

- 1) The parties agreed that the tenancy will continue only if the following conditions are met by the tenant;
- 2) The tenant agrees that it will only be the tenant and their grandchild living in the premise;
- 3) The tenant must have EB removed from the property no later than August 3, 2020; should EB not leave the tenant is entitled to have EB removed by the local police detachment, as EB is not tenant and must leave when requested by the tenant;
- 4) The tenant is not to have EB on the premise at anytime and should EB attend the property the tenant is to ask EB to leave or call the police if EB

is not willing to do so; and

5) Should EB be found on the premise at anytime at the invitation of the tenant, the landlords are entitled to issue a One Month Notice to End Tenancy for Cause for failing to comply with an order of the director.

("Order of the Director")

[emphasis added]

The Landlords submitted photographs that they and others have taken that show E.B. to be on the residential property on the following dates: August 5, September 10, 11, 15, 22, 23, and 24. In their written submissions, the Landlord said that when they ask the Tenant about these attendances that the Tenant said that EB is just picking up his things or his keys.

In their written statement, the Landlords said:

August 17, 2020 – We were knocking on [the Tenant's] door when [E.B.] came out of her suite. He said he just came to pick up the keys. [The Landlord] told him he wasn't supposed to be in her suite. [E.] told us that [the Tenant] wasn't feeling well, she wasn't going to talk to us and to leave her alone. He locked the door to Lorelei's suite on his way out. He said in a threatening manner 'I know people. I can have you taken care of and I can have all your stuff taken in one day. I will be a martyr.' He got into and left in [the Tenant's] vehicle. We contacted the RCMP on his threats and they followed up with [the Tenant] and cautioned her regarding his presence and his threats to us.

In their written submissions, the Landlords said:

A Mutual Agreement to End Tenancy was signed for the end of June. On June 29, 2020, [E.B.] said they were refusing to move out and an Order of Possession was applied for that same date.

On July 27, 2020, the date of arbitration, we agreed to allow [the Tenant] to retain the suite on several conditions laid out in the RTB Director's Order.

Lorelei has failed to comply with the Order, having allowed EB in her suite on many occasions (or he has never vacated) since August 3, 2020. The tenant across from her stated that he has seen EB coming and going from her suite on an almost daily basis. When [R.], our worker, was working or driving by the

premises, EB was seen coming out of her suite after the date he was no longer supposed to be there. He was told by [R.] that he wasn't allowed to be there and by us as well on another occasion when he came out of her suite, locking it behind him. A timeline of events, since the receipt of the Director's Order is attached.

Despite speaking with [the Tenant] about each encounter with [E.] being in her suite and her promises that he won't be there anymore, EB is seen either leaving her suite, in her suite, or they're seen leaving together.

We feel that we have exhausted our efforts in trying to work with [the Tenant] in retaining her tenancy for herself and her granddaughter. Her inability to comply with the Director's Order, and EB's continual presence at the suite and threatening demeanor, left us little choice but to proceed with a subsequent One Month Notice to Vacate for Cause and an Order of Possession.

The Landlords said in the hearing that E.B. is a continuous problem and a problem to other tenants. They said that the Tenant's neighbours have said that E.B. arrives in the middle of the night and bangs on the door. They also commented on the intimidating kind of people with whom he associates.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Order of the Director clearly states that the tenancy will continue, unless E.B. continues to attend the rental unit. I find that the Landlords have provided clear, undisputed evidence that E.B. has repeatedly attended the residential property and entered and exited the rental unit on a number of occasions since August 3, 2020, the deadline set out in the Order of the Director.

The Order of the Director clearly states:

Should EB be found on the premise at anytime at the invitation of the tenant the landlords are entitled to issue a One Month Notice to End Tenancy for Cause for failing to comply with an order of the director.

I find from the evidence before me that E.B. attended the rental unit at the invitation of the Tenant, since E.B. was seen with keys to the rental unit, as well as driving the Tenant's vehicle. There is no evidence before me that the Tenant called the police to have E.B. removed from the rental unit, pursuant to the Order of the Director.

Based on the evidence before me overall, I find that the Landlords are eligible for an Order of Possession for the rental unit and, therefore, I award the Landlords with an Order of Possession, pursuant to section 55 of the Act.

### Conclusion

The Landlords' claim for an Order of Possession is successful, as the Tenant failed to comply with an Order of the Director.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 02, 2020

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Residential Tenancy Branch