



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding New Chelsea Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **ET, FFL**

### **Introduction**

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

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

### **Issue(s) to be Decided**

Would it be unreasonable or unfair to the landlord or other occupants of the property or park to wait for an notice to end tenancy to take effect under section 47 of the *Act*?  
Should the landlord's filing fee be recovered?

### **Background and Evidence**

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on April 1, 2020 with rent set at \$320.00. The tenancy agreement states that this is a BC Housing subsidized unit.

The landlord testified that the tenant poses an imminent danger or threat to the property or to the other occupants of the building. Since moving in, the tenant has been noisy, frequently causing disturbances with his neighbours.

The landlord testified that on November 9, 2020, there was a building-wide power outage. The tenant began screaming “who stole my power” and began causing a disturbance with his neighbours. The landlord testified the tenant knocked on his neighbour’s door and threatened to throw him off the balcony, asking “can you fly?” During his testimony, the landlord was unable to verify the date of this occurrence or explain the discrepancy between his testimony indicating the incident took place on November 9<sup>th</sup> and the narrative provided which indicates the power outage happened on November 5<sup>th</sup>. The landlord did not verify if he heard the statement himself and did not call the neighbour as a witness to testify.

The tenant testified that he did ask the neighbour if he could fly, but that was taken out of context. The actual comment was that if the neighbour could fly, he should “*Flock off*”. The tenant testified that he did not knock on the neighbour’s door, the comment came when the two were passing in the shared hallway. The tenant testified that this neighbour is part of a “clique” of like-minded residents who “gang-up” on other residents who are not in the “clique”. The tenant called a witness, his neighbour across the hall, RH, who gave testimony regarding the tenant’s good demeanour and that other occupants of the building complain all the time and spread rumours.

The landlord testified that there were 2 incidents in October 2020 whereby the tenant had caused smoke alarms to go off. This is a danger to the whole building, as the whole building could catch fire due to the tenant’s inattention. The landlord testified the tenant’s behaviour is erratic and inconsistent and a cause for concern.

The tenant testified that on those occasions, he forgot to turn on the vent when he was cooking chicken. He simply neglected to turn it on, and it wasn’t that big of a deal. If it were a dangerous situation, he would have called the fire department himself, or others would have.

The tenant testified the neighbour down the hall goes to bed early at 8:00 p.m. so the neighbour’s girlfriend can work early. The tenant states he feels that he is being forced to conform to the neighbour’s lifestyle. The tenant testified he weighs 200 lbs. and that he has difficulty in moving around the rental unit. This is especially difficult for him as he has poor balance control due to a head injury. He easily crashes into his furniture and he has suffered fractured ribs from falling down.

The landlord counters that the tenant has a heavy alcohol intake. While he has sympathy for the tenant's situation, the drinking only makes the tenant's balance issues worse and causes noise problems for his neighbours. Due to the noise issues, the landlord cannot rent the two rental units below this tenant.

The landlord's witness JM testified that the major reason the tenancy should end is because of the noise issues. The tenant also consumes alcohol, smokes cigarettes and poses a fire hazard because the tenant cooks while intoxicated, setting off smoke alarms. The witness did not provide specific dates and times of the incidents during his testimony.

The landlord testified he served the tenant with a One Month Notice To End Tenancy for Cause on September 30, 2020. A copy of that notice was provided as evidence. The landlord acknowledges receiving rent from the tenant for each of the months following service of the notice but testified and provided evidence indicating he accepted rent for "use and occupancy" only. The tenant acknowledges he received the notice but that he did not dispute that notice within the 10-day period because he didn't have all his evidence to support the dispute in time. Also, the Covid-19 pandemic has made accessing support and advice difficult for him.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- 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 interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;

- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

**it would be unreasonable, or unfair to the landlord, the tenant 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.**

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*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).*

I find the landlord has provided insufficient evidence to satisfy me there is an **imminent danger** to the health, safety, or security of the landlord or another tenant. No testimony was provided describing actual violence to another occupant of the building or the landlord. Nor has the landlord provided evidence sufficient to satisfy me the tenant caused extraordinary damage to the rental unit requiring an immediate end to the tenancy. While I understand the landlord's reasoning that he cannot rent the units below the tenant due to his noise issues or that there are potential dangers that could arise from smoke alarms going off, those reasons cannot end a tenancy under section 56 of the Act. Once again, the landlord must provide sufficient evidence of imminent danger – not evidence of what the landlord thinks may come to pass.

I have reviewed the evidence of the landlord and I can reasonably conclude that the tenant's noisy behaviour disturbs his neighbours, however I cannot come to the conclusion that anybody's safety or immediate well being is in danger. The landlord has provided evidence of what I consider to be an aggravation or disturbance to another occupant of the residential property. While the evidence provided may justify the issuance of the One Month to End Tenancy for Cause on September 30<sup>th</sup>; the landlord has not satisfied me that it would be unreasonable or unfair to wait for that One Month Notice to take effect. Consequently, I dismiss the landlord's application for an early end to the tenancy under section 56 of the *Act*.

The landlord is at liberty to seek an order of possession based on the One Month Notice To End Tenancy for Cause issued on September 30, 2020 in accordance with section 47 of the *Act*.

#### Conclusion

The landlord's application for an early end to the tenancy pursuant to section 56 of the *Act* is dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

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: December 14, 2020

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Residential Tenancy Branch