# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** ET FFL

**Introduction**

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

- an early end to the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.
The landlords testified, and the tenants confirmed, that the landlords served the tenants with the notice of dispute resolution form and supporting evidence package. The tenants testified, and the landlords confirmed, that the tenants served the landlords with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

I note that the parties are currently scheduled to appear at a hearing before an arbitrator of the RTB on March 11, 2021 do deal with two applications that address a number of issues related to the issues raised at this hearing (including ending the tenancy pursuant to a notice to end tenancy for cause). When the tenants uploaded their evidence to the RTB evidence portal for this application, they inadvertently uploaded it as part of the March 11, 2021 file, and not this one. As a result, I was unaware that the tenants had submitted evidence prior to the start of this hearing and did not have the opportunity to review their documentary evidence in advance of the hearing. I explained this to the parties, and the tenants, during their submissions, directed to me the relevant documents in their evidence package.

**Issues to be Decided**

Are the landlords entitled to:

1) an order of possession; and
2) recover the filing fee?

**Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2020. Monthly rent is $2,250 and is payable on the first of each month. The tenants paid the landlords a security deposit of $1,125, which the landlords still hold in trust for the tenants.

The rental unit is cottage located on the residential property upon which the landlord's house is also located. The two buildings are approximately 100 metres apart. The parties share a driveway and parking area.

Landlord SS testified that problems started with the tenants in the beginning of December 2020. He testified that tenant GH approached his wife, landlord CS, on December 4, 2020 without wearing a face mask and started yelling at her. He testified that CS walked away but GH pursued her and continued yelling. He testified that this incident made his wife very uncomfortable, and that the landlords reported it to the police.

SS testified that the tenants were damaging the rental unit by growing plants (which he alleged were illegal drugs) indoors and that this caused the humidity in the rental unit to rise to unacceptable levels and causing mold accelerated mold growth in the walls. He estimated the cost of repairing this damage to be $20,000. He testified that if this damage was not repaired soon (that is, that the drywall is replaced), the cost to repair the mold damage would greatly increase as it would necessitate the replacement of the wall studs.

The tenants deny causing the humidity in the rental unit to increase to inappropriate levels. They allege that any damage to the rental unit was caused by the landlord's failure to adequately maintain the rental unit.

Both parties provided expert reports in support their respective positions.

GH testified that the tenants have made multiple requests for repairs to be made to the rental unit but that the landlords have ignored these requests and refused to make the repairs. He testified that when he spoke to CS on December 4, 2020 (he denied yelling or not wearing a mask) he was attempting to determine how he might properly make a request for these repairs to be addressed in light of the fact that SS were refusing to accept his requests for repairs through the channels he was making them (text message and email).

Both parties made substantial submissions relating to the alleged damage through the rental unit and the repairs that were required. I will not recount these submissions here

as, for reasons set out below, they are not relevant to my determination. I provide the outline of the dispute by way of a preamble for the ensuing events.

SS testified that, in keeping with the tenants' requests for repairs, he arranged for an inspection of the rental unit to determine what repairs were necessary, as well as possible causes of the damage. He testified that, on December 23, 2020, he left a notice of entry in the tenants' mailbox, advising them of his intention to enter the rental unit for the purposes of conducting an inspection on December 27, 2020.

SS further testified that, on December 25, 2020, he provided a second notice to enter to check on "the windows and the high humidity" on December 29, 2020.

SS testified that on December 27, 202,0 he and an inspector attended the rental unit to check the locks to see if they would be able to access the rental unit on December 29, 2020. He testified that they discovered the lock on the front door of the rental unit had been changed by the tenant, but that they were able to gain entry to the rental unit via another door.

SS testified that he attended the rental unit on December 29, 2020 with the inspector and the inspector made a thorough inspection of the rental unit and produced a lengthy report (which was submitted into evidence).

SS testified that the tenants were not present for either of these inspections but that they were apparently monitoring the rental unit via security camera. He testified following each of the inspections, the tenants reported SS's entry to the local police, alleging trespass. SS also testified that during the December 29, 2020 inspection the tenants played very loud music in the rental unit (activated remotely), which reached levels of between 100 to 140 decibels. The inspector included these measurements in his report.

GH testified that the tenants were not in the rental unit for much of December 2020 and did not have the ability to receive notices in their mailbox. Accordingly, he argued that the tenants did not have any valid notice of the landlord's two inspections. He testified that he was not certain who had entered the rental unit from the security footage as the individuals were wearing face masks. GH testified that prior to leaving the rental unit, he notified the landlords' lawyer of this and provided an alternate address for service during the time he was away.

GH testified that on December 29, 2020 at around 9:30 am a masked man (whom he later learned to be a locksmith) attended the rental unit and made alterations to the locks of the rental unit.

GH testified that following this he contacted the police and attempted to press trespassing charges. He testified that an RCMP officer spoke with him and advised him that this was a matter to be resolved via the RTB. He testified that the RCMP officer

advised him that if the parties could not resolve their problems between themselves, they could always have a “consensual fight”. GH testified, and tenant VFP confirmed, that the tenants at first thought the RCMP officer was joking, but that the RCMP officer then spent about half hour explaining to them why consensual fights were legal in Canada. GH and VFP both admitted that they thought the whole conversation was bizarre.

Despite this, on December 29, 2020, GH sent the following text message to SS:

> This is to formally challenge you to a duel. If you step on the property without notice or cause again, I'll consider you accepting the duel.

SS testified that upon receiving this text message he was disturbed. He testified that English is his second language, so he looked up the definition of the word “duel” online and understood it to mean “formal fight with deadly weapons between two people over a matter of honor”. Learning this caused SS to worry for his safety.

SS testified that his two children (aged 15 and 17) live on the residential property, and due to COVID-19, spend quite a bit of time at home. He testified that he was not comfortable leaving them home alone with GH occupying the rental unit. He testified that as a result he stayed home more often than he normally would, to make sure they are not harmed by GH, and this caused him to neglect his business.

GH testified that he understood a duel to mean a “consensual fight” and that he understood that what he did was legal. During his testimony I asked GH if, due to the phrase “if you step on the property without cause or notice again, I'll consider you accepting the duel” that the landlord may have understood this to mean that if he set foot on the property (which, I note, GH never defined in either the text message or the at hearing) the landlord would be running the risk of being assaulted by GH. GH acknowledged that the text message was “worded poorly”.

## Analysis

Section 56 of the Act governs applications for orders for the early ending of a tenancy:

> **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

(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.

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

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 most circumstances this is the person making the application.

So, the landlords must prove it is more likely than not that the tenants have acted in one of the ways set out at section 56(2)(a) of the Act, and, per section 56(2)(b) of the Act, that it would be unreasonable or unfair to end the tenancy by way of a notice to end tenancy (that is, wait until the March 2021 hearing to have the matter of the end of tenancy adjudicated).

For the following reasons, I find that the landlords have satisfied both of these requirements.

The parties have submitted hundreds of pages of evidence in support of their arguments at this hearing. The landlords set out several bases upon which they believe they are entitled to an early end to tenancy. In order to be successful in their application

they do not need to prove that each of these bases is a valid reason for ending the tenancy early, rather they need only to establish one of these.

For this reason, I have not provided a detailed account of all issues by the parties in the documentary evidence. I have only included those germane to issue on which I am awarding the order of possession.

Based on the testimony of the parties, and the documentary evidence submitted, I find that GH unreasonably disturbed landlord SS by challenging him to a duel on December 29, 2020 and by advising SS that he would consider SS to have accepted the challenge if SS stepped on the “property” without notice or cause again.

I specifically make no findings as to the legality of GH is challenge, as I note that the provision in the Criminal Code of Canada criminalizing the act of challenging someone else to a duel was struck in 2017. The legality of challenging someone to a duel does not make any difference to my decision, as the Criminal Code of Canada addresses only issues of criminality, and not issues of what reasonably or unreasonably would disturb an individual. An individual may be unreasonably disturbed by a legal act.

I accept SS’s is understanding of the word “duel” to mean “a consensual fight with weapons” as a reasonable definition of the term. This accords with my understanding of the term. I do not understand the word “duel” to mean merely a consensual fistfight. It was not unreasonable for SS to understand the December 29, 2020 text message to me in that, if he set foot on the tenants’ property GH would attack him with a weapon.

In the December 29, 2020 text message, GH indicated that even if SS did not verbally or in writing communicate his acceptance of this challenge, GH would presume SS’s acceptance of the challenge via SS’s actions. In effect, the December 29, 2020 text message served to communicate to SS that GH has imposed a zone around the rental unit that, if SS entered into without notice or cause, GH would be permitted to violently attack him.

Such a position is absurd, reckless, potentially illegal, and has undoubtedly caused SS a great deal of fear and trepidation. Such a position is not properly characterized as a “challenge”, rather, I understand it to be a threat of bodily harm along the lines of “don’t set foot on my property, or else…”

I note that it is not clear what GH meant by “property”. I cannot say if it is restricted to the interior of the rental unit itself, or the surrounding exterior. Additionally, I am unsure what GH meant by “without notice or cause”. This seems to suggest that the landlord could enter the rental unit without giving notice, but with having cause to do so. I would also note that, based on the testimony of SS, it is arguable that he did give proper notice of his intention to enter the rental unit on the prior occasions, as section 90 of the Act deems a document to be served three days after it is left in a party’s mailbox.

These vagaries serve to amplify the threat to SS, as it is not clear what actions he could or could not take to avoid GH from drawing the conclusion that SS “accepted” the challenge to a duel.

I accept that, as a result of this text message, SS feared for the safety of himself and his family and that he has made it a point, whenever possible and at inconvenience to himself, not to leave his children home alone when GH is in the rental unit. In light of GH’s threat, this is not an unreasonable course of action.

I am not persuaded by GH’s argument that since an RCMP officer advised him that it is perfectly legal for GH challenge SS to a duel, his actions are appropriate and not warranting sanction. As stated above, just because an action is not illegal does not mean that it would not unreasonably disturb someone (for example, it is not illegal to vacuum your house at 3:00 am every night of the week, but were someone to do this, their downstairs neighbour would likely be unreasonably disturbed).

I also note that I am skeptical that an RCMP officer would counsel GH to resolve a civil dispute via violence. I further note that, even if the RCMP officer did counsel this and indicate that it not a criminal offence to challenge someone to a duel, the testimony of GH does not indicate that the RCMP officer advised him that it was legal to imply SS’s consent to a duel from merely setting foot on his “property”. It would seem that GH acted outside even the purported advice of the RCMP officer.

Section 56(a)(a)(i) of the Act does not require that GH intended to disturb the landlords by issuing the challenge to a duel. It is silent as to the intention or motive of the tenant. Rather, I understand the section to require that I look at the effect of the tenants’ actions. Based on SS's testimony I am satisfied that he was unreasonably disturbed by GH’s “challenge”.

Accordingly, I am satisfied the requirement of section 56(1)(a) is satisfied.

I must then look to see if it would be unfair or unreasonable to the landlord to wait until the March 2021 hearing to order that the tenancy is ended.

Based on the proximity of the rental unit to the landlord’s house, the nature and severity of the disturbance, and the effect the disturbance has had on the landlord (not wanting to leave his teenage children alone at home), I find it would be unreasonable to require the landlord to wait until the March 2021 hearing to obtain an order of possession. GH’s actions are thuggish, unconscionable, and have no place in modern society. The fear instilled in SS by GH’s threat is real, and it would be unfair to the landlords to require them to continue living with this fear any longer than they have to.

Accordingly, I grant the landlords’ application and order that the tenants provide the landlords with vacant possession of the rental unit within two days of being served a copy of this decision and attached order by the landlords.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, they may recover their filing fee from the tenants. Pursuant to section 72(2) of the Act, the landlords may retain $100 of the security deposit in satisfaction of this amount.

## Conclusion

Pursuant to section 56 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached orders by the landlord.

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: January 20, 2021

Residential Tenancy Branch