



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

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

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord was represented by her agent, J.T-G. and the tenant was assisted by her advocate, A.Q.

Both parties confirmed the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on January 20, 2021. The landlord stated that the tenant was served with the submitted documentary evidence in the same package. The tenant stated that only 5 of the 8 documentary evidence files were received.

Discussions back and forth with both parties resulted in the tenant confirming that she did in fact receive all of the landlord's documentary evidence package provided to the Residential Tenancy Branch. Both parties also confirmed the tenant served the landlord with her 19 late documentary evidence. The landlord stated that there were no issues with the tenant's late evidence and that the hearing could proceed. On this basis, I find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?  
Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an urgent application to end the tenancy early and to obtain an order of possession as the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord.

The landlord has provided written details which state in part,

*The tenant forced her way into/or climbed through the upper floor window and was found in the masterbedroom bathroom while I was doing a final walkthrough with the previous owner. The police were called and she was released agreeing to appear in court and agreed not to approach or come in contact with the previous homeowner and her family. On another occasion following this arrest she threatened the previous owner and her friend with a baseball bat and was arrested.*

[reproduced as written]

The landlord clarified that the main issues with the tenant is that she had broken into the main upstairs unit belonging to the previous landlord and has uttered threats against that landlord. The landlord stated that on January 2, 2021 the new landlord was conducting a walk-thru (inspection) of the property with old landlord the tenant was discovered in the unit. The old landlord confronted the tenant in the bathroom asking her to get out of the unit. The landlord has submitted a 1 minute video recording using it primarily for audio purposes. The landlord stated that the video/audio recording shows the old landlord repeatedly demanding the tenant to leave when found in the bathroom. The recording reveals the tenant saying that the door was not locked when she entered and the old landlord stating that the doors were locked. The landlord stated that the police were called and the tenant was arrested and charged with "break and enter". The landlord also stated that the tenant had uttered threats against the landlord's agent. The landlord stated that the tenant is under court ordered conditions to not have any contact with the old landlord or go to their residence. The landlord feels that the tenant is an imminent threat to the landlord and the property.

The tenant disputed the landlord's claims stating although she was arrested for "break and enter" she has not yet been found guilty nor has the tenant ever uttered threats against the landlord. The tenant confirmed in her testimony that she is under a court

order called an undertaking promising to return to court and not have any contact with the old landlord or to go to her residence. The tenant referenced a witness statement of B.R. dated February 13, 2021 but signed on February 15, 2021. The witness statement refers to the named tenant being arrested for swinging a baseball bat at the landlord and threatening her. The witness stated, "At no time did I see this action take place."

### Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord's property;
  - 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
  - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, both parties rely primarily on direct testimony. The landlord provided testimony that the tenant had broken into the main rental unit and had threatened the landlord. The landlord relies upon a submitted video recording which provides primarily for the reliance of audio from the recording. It shows the new landlord and the old landlord doing a walk-thru (inspection) of the landlord's main unit. The old landlord finds

and confronts the named tenant in the bathroom. The recording was being made by the new landlord. The new landlord stated that the police were called and the tenant arrested and charged with break and enter. The tenant despite arguing that no threatening charges were laid confirmed that she was charged with break and enter and was released by a court order requiring her to not have contact or go to the old landlord's residence. I find that although the landlord's evidence is not conclusive it is compelling. The tenant confirmed in her testimony that she was arrested and charged with break and enter. I find that I prefer the evidence of the landlord over that of the tenant on a balance of probabilities. I find that the tenant was found inside the landlord's unit without the landlord's permission as evidence from the video recording. The old landlord's responses is that of someone in disbelief. I find that the landlord's evidence to be consistent and compelling. On this basis, I find that the landlord is entitled to an order for an early end to the tenancy and to obtain an order of possession. This order to take effect 2 days after it is served upon the tenant.

The landlord having been successful is also entitled to a monetary order for recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.  
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia.

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: February 23, 2021

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Residential Tenancy Branch