



# 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 landlords' 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 tenant 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 tenant's wife ("**BS**") also attended the hearing and made the majority of the submissions on the tenant's behalf. In this decision, I will refer to the tenant and BS collectively as "the tenants". Three witnesses attended the hearing as well: **CY**, an occupant of another rental unit on the residential property, for the landlords; and **OF** (who has been assisting the tenants in dealing with a dispute with CY and whose interaction with CY has become the subject of this application) and her husband **GF**.

The landlords testified, and the tenant confirmed, that the landlords served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant testified, and the landlords confirmed, that the tenant served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **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 details 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 dispute when the tenancy started. The landlords claim the tenancy started on January 1, 2011. BS claimed it started in 2005. The landlords provide a written, month-to-month tenancy agreement indicating a start date of January 1, 2011. BS stated that there was a tenancy agreement between the parties prior to this agreement but offered no documents to corroborate the assertion. In any event, the parties agree that the monthly rent is currently \$850 and that the tenant paid the landlord a security deposit of \$400, which the landlords retain.

The rental unit is the front half of a single-detached home. The back half of the home contains a second suite, which is rented to CY (the “**rear suite**”). The rear suite was rented by the landlords to a series of individuals over the past several years, all of whom were friends or associates of the tenants. CY moved into the rear suite in 2019. She pays monthly rent of \$750 plus utilities. Prior to the tenancy, CY and BS knew each other from work.

The relationship between CY and the tenants is acrimonious. The parties provided much evidence (both via testimony and written statements) regarding the breakdown of the relationship. I will not describe the details of this dispute in this decision, as it is not relevant to the issue at hand, except to say that the parties provided conflicting testimony as to the nature and cause of the dispute, that the parties agree that the RCMP has attended to residential property on more than one occasion as a result of conflict between CY and the tenants, and that the tenants have filed (or intend to file) a Notice of Civil Claim for defamation against CY in the Supreme Court of British Columbia (a copy of this notice was not entered into evidence). OF is assisting the tenants in preparing this claim.

OF and BS testified that the tenants attempted to file the defamation claim in BC Provincial Court but were told that it must be filed in BC Supreme Court. However, OF testified that when she attended the Provincial Court Registry, she was told that the tenants could apply for a restraining order against CY in the Provincial Court. The tenants did this. OF testified that she was instructed by the registry staff to serve CY with a copy of the application. She now concedes that this was not the correct procedure, and that CY would be notified of the application after a preliminary hearing involving the tenants occurred, and that CY would be required to attend a subsequent hearing to give evidence prior to any order being made.

No evidence was submitted setting out the correct procedure for applications for restraining orders, and such procedure is beyond the scope of my expertise. However, at the hearing CY agreed with procedure set out above.

In any event, at the time the application for the restraining order was made, OF and the tenants were under the impression that CY needed to be served with notice of it. BS testified that she asked OF to personally serve the notice to CY. On June 4, 2021, OF and GF attended the rear suite to serve CY. The interaction between OF, GF, and CY that followed is what led to the landlord making this application. Helpfully, GF recorded

the interaction on his phone, and submitted it into evidence. The incident recorded is brief and chaotic. I will attempt to describe it.

In the video, OF walks up to the front entrance of the rear suite. The front door is open, but the screen door is closed. OF knocks on the screen door frame and says to CY (who is inside the rear suite and not visible on camera) "I just gotta show you this. I'm not interested in fighting, so if you're in the mood please don't. I just gotta give you the information and then I gotta go." CY can be heard speaking, but the words cannot be understood. OF continues "So it's a simple thing here, so you might want to have the paper. Do you want it?" OF holds up a single sheet of paper. She then states "cause you're going to need it. If you don't show up to court then you're about to get kicked out. So anyways, there is a restraining order against you. It is going to be held..." CY then says something inaudible, to which OF replies "too bad". OF resumes "it'll be held on July 20, 2021 at 2pm.". She then takes a step back from the doorway, squares her shoulders to the door and holds the piece of paper in front of her, facing the door, with two hands, and says "once this become final, you're out."

As OF says this, CY shuts the door. OF then opens the screen door saying "so this is yours". CY opens the front door a crack and then shuts it again. She testified that she did this because her sandal was stuck in the door. The recording shows that, as she closes the door the first time, a loose sandal gets caught on the bottom of the door as it is closing.

OF then places her left hand on the doorknob of the now-closed front door, turns it, rests her right forearm on the door and appears to push the door open. At the hearing OF testified that she did not push the door open, but rather that the door was pulled open by CY from the inside. CY denied this. In any event, the door opens a few inches and CY unsuccessfully attempts to throw the piece of paper into the rear suite.

As she does this, CY pulls the door open. CY emerges, left arm raised and already in motion as if to slap at OF's face. Instead of slapping, she grabs OF's chin, and then kicks at OF with her left leg. OF testified that CY kicked her in the stomach. The video does not show this, as GF moves to intercept CY, causing the action to occur out of frame. As CY is lunging at OF, she seems to say "get the fuck away from my door".

The women separate, and GF is between them. OF yells "you want to hit? Let's do it bitch." The camera, now pointed at the side of the house, shows GF's right arm reaching into frame to grab CY's left arm and hold it aside. It appears as if he intercepted a second blow from CY aimed at OF. GF releases the arm mutters "you fucking cunt" and says, "yeah go ahead". The camera remains pointed at the wall of the rear suite. OF can then be heard to say "you want to do it. Let's get her [GF]. Fucking nail her right in the fucking head." CY then says, "get the fuck outta my house." The camera remains pointed at the outside wall of the rear suite. There is no noise to indicate that any further blows have been landed.

OF then yells, "you want to attack me bitch". The camera then moves into the threshold of the door. OF yells again, "you want to attack me?!" GF is saying "leave her, leave her" in a low voice. The camera is pointed at OF, who is standing in the doorway. GF is beside her, facing her. GF inserts himself again between CY and OF. OF again says "get her [GF]." CY again states "get outta my house". The camera then swerves to briefly show the inside of the rear suite. CY can briefly be seen advancing towards OF and GF with a large wooden board in her hand. The camera then gets pointed at the ground, and GF says, "take this" in a calm low voice, which I understand to be directed at OF and referring to the camera.

The video ends here.

CY testified she picked up the board to protect herself, and that GF took it from her and "laid into [her]" with it, causing her to "fly through the air", knock into her walker, and fall to the ground. She testified that she was injured as a result of this, having bruised and scratched legs and a swollen ankle. She submitted photos of these injuries.

GF disputed this version of events. He testified that CY attempted to strike OF in the head with the board (which he described as a "4 by 4") and that he caught the end of it with his hand. He stated that he held onto the board so that OF could leave. He testified that he did not want to turn his back on CY, in light of her attempt to strike his wife with the board so, after passing the phone to his wife, he shoved the 4x4 (onto which he held one end and CY held the other) into CY to push her back to gain enough distance between them to safely extricate himself from the rear suite. He testified that he observed CY falling to the ground as a result of this push.

OF testified that, after being hit by CY, she was angry, which is why she made the comments she did (as set out above). She denied that she attacked CY. She stated that any injuries incurred by CY were the result of her or GF acting in self-defense. She testified that her and GF's hands were scratched during the encounter from grabbing the 4 by 4. She also testified that she received a minor burn from CY's cigarette (which CY was holding during the entire altercation).

At the hearing, OF also acknowledged that the document she was attempting to serve on CY was not a restraining order (as she indicated in the video), but rather an application for one.

On the application, the landlords stated that they sought to end the tenancy early due to OF and GF assaulting CY as well as due to receiving "threatening messages" from OF. However, at the hearing, the landlords did not provide any testimony relating to threatening messages received from OF. The entirety of their submissions related to the altercation between CY, OF, and GF.

## **Analysis**

As the landlords did not make submissions of any threats allegedly received from OF at the hearing, I do not find that any such threats can form the basis of ending the tenancy. The landlords have not discharged their evidentiary burden to prove the threat's existence. Accordingly, I will restrict my analysis to the events of June 4, 2021.

The landlords seek to end the tenancy pursuant to section 56(2) of the Act, which states:

**Application for order ending tenancy early**

(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.

There is no dispute that OF and GF are persons permitted on the property by tenants. They were serving the application for a restraining order at the request of the tenants. As such, any actions undertaken by them could cause the tenancy to be ended pursuant to this section.

The tenants do not dispute that GF applied force to CY (by shoving a board that she was holding into her) which caused her to suffer injuries. This action may satisfy one of the criteria set out at section 56(2)(a). However, consideration must be given to the surrounding circumstances.

Upon review of the recording of the incident on June 4, 2021 that was submitted into evidence, I find that any physical force applied to CY by either OF or GF was done so in

self-defense. As such, I do not find that such an application of force warrants the ending of the tenancy. That being said, I do not find OF acted appropriately during the incident. OF misrepresented the contents of the document she was attempting to serve on CY (it was not a “restraining order” as she indicated it was). I find that OF, without lawful reason, opened the door to the rear suite to attempt serve this document on CY. I reject her assertion that CY opened the door. OF’s hand is clearly on the doorknob and she is applying force to the door using her forearm when the door opens.

However, these two actions alone do not warrant ending the tenancy. They may represent a disturbance, but I do not find that they are an “unreasonable” disturbance.

As to the injuries suffered by CY, I find that CY initiated the physical contact. Without warning, she opened the door and struck OF in the head and stomach. In such circumstances, it is understandable that OF became angry. I note that, even though OF can be heard encouraging GF to attack CY, the recording does not show that GF acted on this encouragement. Rather, GF placed himself between CY and OF in an attempt to prevent further violence. Given the circumstances, I do not find his use of profane language during the incident to be unreasonable.

GF fended off at least one blow from CY by grabbing her arm. I do not find that he picked up a board to attack CY. Rather, I accept his testimony that CY brandished the board, and that he grabbed it to protect OF. I accept his testimony that, once OF was a safe distance away, he shoved the board into CY, causing her to fall down, so that he could exit the rear suite without turning his back on her. I find this course of action to be reasonable. As such, I do not find that it rises a level warranting eviction.

I find that any injuries CY suffered as a result of her altercation with OF and GF were the result of their reasonable defensive actions. It is understandable for CY to be upset or angry with OF for opening her door or misrepresenting the status of a restraining order proceeding, but this does not give her permission to physically attack OF. I find that, while OF may have provoked CY by opening the rear suite door, CY’s response was entirely out of proportion to OF’s wrongdoing.

As such, I do not find that OF or GF’s actions satisfy any of the criteria set out at section 56(2)(a) of the Act. Accordingly, I decline to order that the tenancy is ended.

**Conclusion**

For the reasons set out above, I dismiss the landlords' application, in its entirety, without leave to reapply.

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: July 9, 2021

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Residential Tenancy Branch