



# 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 this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application.

### **Preliminary Issue: Digital Evidence**

The tenants testified that although they were served with the landlords' evidence, they were unable to view the videos that the landlords had submitted. The tenants requested that these videos be excluded.

Rule 3.10.5 of the RTB Rules of Procedure states the following about access to digital evidence.

#### **3.10.5 Confirmation of access to digital evidence**

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

As the tenant was unable to view the digital evidence submitted by the landlords, I exercise my discretion to exclude this evidence. The landlords confirmed that they still wished to proceed with the hearing as scheduled.

With the exception of the excluded videos, all parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed with the hearing.

### **Preliminary Issue: Adjournment of Hearing**

At the outset, the tenant requested an adjournment of the hearing. The tenant and their agent noted that the tenant was still innocent until proven guilty, and had yet to find out whether charges would be laid in relation to the alleged offences that took place on June 16, 2021. The tenant felt that the landlords' application was made on false pretences, and that an adjournment is necessary to await the outcome of these pending charges.

The landlords were opposed to the adjournment as they had filed this application on an expedited basis for an Order of Possession due to the nature of the matter, and that an adjournment would be significantly prejudiced by the delay.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". While the tenant testified that he had been out of town for approximately one week, he had not taken steps to attempt to adjourn this proceeding beforehand. Nor did the tenant have an agent attend to either explain why he could not attend or represent him at the hearing, subject to Rule 6.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...

- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

In consideration of the submissions before me, and the fact that this hearing was set on an expedited basis, I find that an adjournment is not only not necessary, but would significantly prejudice the landlords. This application pertains to the landlords' application under section 56 of the *Act*, where an Order of Possession is only granted when an arbitrator determines that it would be unfair or unreasonable for the landlords to wait for the standard application under section 55 for an Order of Possession. The onus is on the landlords to support that this is the case.

Although I recognize the tenant's concerns that at the time of the hearing that the criminal charges were still pending, I find that an adjournment would impact the landlords' ability to have their application heard on an expedited basis. As the burden of proof is on the landlords to support their case, I find that an adjournment is not necessary in order for both parties to be fairly heard. Accordingly, the request for an adjournment was not granted. The hearing proceeded.

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

Are the landlords entitled to an early end of tenancy and an Order of Possession?

Are the landlords entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2020, with monthly rent currently set at \$1,250.00, payable on the first of the month. The landlords collected a security deposit in the amount of \$625.00, which the landlords still hold.

The landlords testified that they had served the tenant with a 1 Month Notice to End Tenancy for Cause on May 27, 2021, and since the issuance of the 1 Month Notice, the tenant had become extremely threatening to the extent that the landlords have become fearful of the tenant.

The main incident took place on June 16, 2021 at approximately 6:30 p.m. when the landlords observed the tenant removing the security camera from the wall. The landlord TH went to investigate the matter, and an altercation took place which was witnessed by a neighbour. The landlords testified that the tenant was yelling profanities, and uttering threats to kill SK after SK had entered the tenant's suite to look for the camera. The landlords attended the police detachment to provide a statement later that evening. The landlords also submitted a statement from an neighbour who had witnessed the incident.

The landlords testified that on June 21, 2021, the tenant made another threat to kill SK. The tenant was arrested and released on conditions on June 21, 2021 in relation to one count of uttering threats, and one count of mischief under \$5000.00. The conditions include a no-contact condition with the landlords except to deal with tenant/landlord issues.

The landlords testified that despite the undertaking, the tenant continues to make threats towards the landlords, including another threat on June 24, 2021, and July 8, 2021. The landlords testified that the tenants actions are a deliberate attempt to intimidate and harass the landlords, and that the tenant has not stopped despite their repeated calls to the police and the filing of this application.

The tenant disputes the landlords claims that he had uttered threats to kill or harm them. The tenant testified that the landlords have increased their surveillance on the tenant since the beginning of the tenancy, and that the tenant has been wrongfully accused of being a bad tenant.

The tenant admits that he did remove one of the landlords' cameras which the tenant felt was affecting his privacy. The tenant denies the allegations which led to the arrest and release on conditions. The tenant testified that he did not utter threats, or continue to do so, and that these are false accusations by the landlords. The tenant called a witness, VR, who is the tenant's girlfriend. VR testified that the landlords have made false statements, and that the landlord SK was taking photos of her car when she went to visit the tenant. VR testified that she had phoned the tenant to inform him, which agitated the tenant. VR and the tenant testified that they felt that they were the ones being harassed and intimidated, and that some of the concerns brought up were unjustified, such as the fact that the tenant suffered from insomnia ,and often went out to get fresh air late at night. The tenant denies that these actions were efforts to harass or intimidate the landlords.

### **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.*

The reasons cited in the landlords' application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlords to wait until an application to end the tenancy for cause were considered.

The landlords provided detailed written evidence and testimony for this hearing to support why they felt that this tenancy should end immediately. The tenant disputes the allegations made by the landlords, and feels that the landlords have made false accusations in support of this application.

The landlords testified that they had served the tenant with a 1 Month Notice to End Tenancy on March 27, 2021. The landlords are concerned about the escalating nature of the tenant's behaviour since that date, including the incident that took place on June 16, 2021.

I have considered the submissions and evidence of both parties. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair. As stated in Residential Policy Guideline 51, applications to end a tenancy early for very serious breaches only.

I acknowledge the fact that the tenant disputes the pending charges listed on the Undertaking, and that at the time of these charges are still pending. I also acknowledge the fact that there has been an obvious deterioration in the relationship between the parties prior to the issuance of the 1 Month Notice.

In light of the evidence before me, I find it undisputed that the tenant did remove the landlords' camera without permission or authorization to do so. Although the tenant felt his privacy was breached, the tenant did not file an application for dispute resolution in relation to the issues that the tenant described. Instead, I find that the tenant had deliberately interfered with the landlords' property. Regardless of whether the tenant will be formally charged or convicted on a future date, the tenant has admitted to removing the camera. Furthermore, I find that the landlords had provided a witness statement which I find to support the landlords' statements that the tenant had uttered threats and profanities towards the landlords. Whether the threats included threats to cause death or not, I find that the landlords had provided sufficient evidence to support that the tenant did engage in behaviour that was heard by the neighbour.

Although the tenant may have issues with the landlords, and although the tenant disputes the service of a valid 1 Month Notice on him, I find that the tenant had responded in a manner that has significantly interfered with and unreasonably disturbed the landlords. I find the evidence provided by the landlord and their witness is in significant contrast to the testimony provided by the tenant, who claims to be an "exceptional tenant". I am satisfied that the tenant had caused the landlords considerable concern for their personal safety.

In this case, I am satisfied that the landlords have met the burden of proof to support that they will face the threat of further disturbance from the tenant if this tenancy was to continue. I find that the tenant has acted in a matter that was extremely disturbing and threatening to the landlords. Under these circumstances, I find that it would be unreasonable and unfair for the landlords to wait for a 1 Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the landlords have provided sufficient undisputed evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlords.

As the landlords have been successful in this application, I allow the landlords' application to recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$100.00 of the security deposit in satisfaction of this claim.

### **Conclusion**

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords to recover the \$100.00 filing fee by allowing the landlords to retain \$100.00 from the security deposit for this tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: July 22, 201

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Residential Tenancy Branch