



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

ET, FFL

### **Introduction**

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as they say that the Tenant poses an immediate and severe risk to persons and property; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and two agents for the Landlord, L.R. and R.M. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. The Tenant called in ten minutes late to the hearing, as she said that she first used the code for another hearing to get into this teleconference. The Tenant provided affirmed testimony thereafter.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Landlord, T.T. ("Witness"), was also present and provided affirmed testimony. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agent said that they served the Tenant with the Notice of Hearing documents and their evidence by attaching it to the Tenant's rental unit door on August 24, 2021. The Landlord submitted a proof of service completed by the Agent, R.M., who said he observed the Agent, L.R., attach the Notice of Hearing documents and evidence to the Tenant's rental unit door. The Landlord also submitted a photograph of these packages attached to the door with the rental unit address number.

When the Tenant arrived in the hearing, we reviewed the Landlord's service for this proceeding. The Tenant said that she was away from home until early September, therefore, she did not receive these documents right away. The Tenant said that her mother checked on the rental unit every other day and that the Tenant only saw these documents on September 2, 2021. The Tenant did not indicate by whom or when the documents were removed from the door.

I have before me the Landlord's evidence of their documented service of the Notice of Hearing documents on the Tenant, including a witness statement and a photograph of service. In contrast, I have only the Tenant's testimony in this matter. Based on the evidence before me, I find that it is more likely than not that the Landlord served the Tenant with the documents and evidence for this proceeding, as stated in their proof of service. I find that the Tenant was properly served, pursuant to the Act.

The Tenant said that she has a lot of evidence to provide, including audio and/or video recordings; however, she said she was unable to upload these to the RTB. The Tenant did not say whether she tried to serve the Landlord or not.

Pursuant to Rule 10.5, the Tenant was responsible for serving the Landlord and the RTB with her evidence "at least two days before the hearing". Our records indicate that the Tenant called the RTB on September 7, 8, and 9, 2021; however, the notes indicate that the Tenant was calling about another hearing scheduled for September 30, 2021, which has been moved to October 4, 2021, because of the statutory holiday on September 30, 2021 (*in case the Agents were unaware of this change*).

Based on when she was served with the Notice of Hearing, I find that the Tenant was given sufficient time to prepare for, submit, and serve evidence for this proceeding. She indicated that she was away and did not receive the Landlord's documents until September 2, 2021; however, I find that this was not the Landlord's fault, and I find that it would be prejudicial to the Landlord to delay this hearing further, because the Tenant was away from home at the time of service. According to her testimony, the Tenant had six days in which she could have gathered and uploaded evidence to the RTB and served to the Landlord. However, neither the Landlord nor the RTB received any evidence from the Tenant. Based on this analysis of the evidence before me on this matter, I find that the Tenant's difficulties with service resulted from her having left it until nearly the last moment to do this. As such, the Tenant's documentary evidence was not before me for consideration in this expedited hearing.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Should the tenancy be ended early, and the Landlord awarded an order of possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2018, with a monthly rent of \$472.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$414.50, and no pet damage deposit.

In their Application, the Landlord said:

Tenant and individuals they attract to unit present severe risk to young families/seniors on property. Police attend regularly. Unit door kicked in multiple times in recent weeks, including by police. Individuals associated with tenant are described by police as 'known criminals'; they routinely intimidate vulnerable families/seniors on property, who are terrified to report incidents for fear of reprisal. Police have advised tenants not to confront Tenant or her guests and to avoid them.

The Agent said that the Tenant was served with a One Month Notice to End the Tenancy for Cause; however, the Agent said that the Landlord seeks an early termination of the tenancy and an Order of Possession for the rental unit, as they say that the Tenant poses an immediate and severe risk of causing injury and damage.

The Landlord's Witness spoke first and addressed different incidents she had witnessed involving the rental unit. The Witness said that there had been multiple police attendances at the rental unit this summer. She said between June 14 and July 29, 2021, the police attended the rental unit four times.

The Witness said:

On July 29 there was a break-in at her unit at 6:20 a.m. I don't believe [the Tenant] was home at the time.

There was a knock on my door from a police officer on July 6. I had only heard loud banging next door at two in the morning. There was also July 1<sup>st</sup>. I don't know if it was a break-in, but there was police presence and multiple loud bangs.

There was a disturbance on the 24<sup>th</sup> [of August] in the afternoon. It was the smell of burning hair, and there was a man burning something in a bowl on the patio. There's regularly the smell of cigarette smoke in my unit. Up until mid-June and then since June 14 it has gotten a lot worse, and it is presenting health issues to myself and my son.

The Agent noted that it is a non-smoking unit, and that the Tenant signed the tenancy agreement saying that non-smoking is a material term of the tenancy agreement.

The Agent then asked the Witness about the "parking lot incident". The Witness said:

On August 15, someone was changing the deadbolts in her unit and I snapped a photo of it. I went back to my car to park it. [The Tenant] had chased me down there and asked why I took a photo and violated her rights. I first didn't want to engage, as my son was in car with me, so I got out of the car to try to end it. I told her to call the police if she wants... she called me a 'fucking cunt' and went off. This was in front of my toddler

The Tenant said:

I got upset and I said 'fuck', because I was upset. I was trying to speak with her about everything. You keep putting notes on my door. She's taking pictures of the inside of my unit when door was open.

I don't smoke in my unit. My mom smokes, but barely comes to my house.

People come to my unit who are tenants who are behind me. They smoke.

The Landlord submitted an email dated August 15 at 5:19 p.m. It is an email from the Witness that was sent to the Agents, and it details this incident between the Witness and the Tenant. The Witness indicates that the Tenant was angry, because she thought the Witness was taking pictures of the inside of her unit. The Witness said she told the Tenant that she was not interested in the inside of her unit, but that she took a picture of people other than the Landlord changing the locks.

The Witness also said she has a video recording from the discussion in the parkade. The Agent, L.R., said that she watched this video and found the Tenant to be "aggressive and hostile" toward the Witness.

The Agent asked the Witness about an incident on August 27, 2021. The Agent asked if the Witness could confirm the police presence on this day with their canine unit. The Witness said:

Yes. I woke up to the sound of the dogs barking. I saw [Tenant] outside talking to the police, as well as another man. I don't know what happened after that.

The Tenant commented on this matter, saying:

On the 27<sup>th</sup> I had a jealous ex-boyfriend - the police called for my jealous ex-boyfriend. I called them to protect me, myself. They were looking for my ex. The canine unit was there. I have a no-contact order against him. The canine unit came into my unit to see if he was there - to protect me.

The Landlord submitted reports from tenants who feel unsafe, because of the Tenant and the people she brings to the residential property. The first report reads, as follows:

If [R.M.] contacts ...Police, he can get the confirmation of both incidents for his records that will be more credible. I don't mind talking with him, but I don't want my name used as I don't feel safe as it is. These guys are not young punks. They are seasoned criminals/drug addicts big time. They know that I am aware of what they did to my car. The guy that owns the burgandy car came to my door and, asked to use my phone 3 days ago. I said my phone was dead and, no charging. He knocked on my door and, said he needed a jump start. I am sure he is casing my house. I have an alarm on my front door so, turning it on at all times. I don't feel safe here. I am in worse position now that they know, I know it was them that

robbed my car.

[reproduced as written]

A second report reads, as follows:

Between the consistent disturbances & direct negative impact on my health I cannot continue to live beside the tenant of [rental unit address]. I am asking for immediate consideration for relocation.

Please let me know if there is more I need to provide.

[reproduced as written]

A third report reads:

I was woken up to someone breaking into unit [rental unit address] around 6:20am, came downstairs & a couple of the neighbours from the upper units across the courtyard were at their windows & asked questions. When they described a man I called it into the police. He came out as I was on the phone with 911. I couldn't get a photo but he ran off as I tried. He was covered from head to toe but I, in my bathrobe, was entirely visible to him. I'm concerned about whomever it was returning as they were obviously interrupted in the process of whatever they were doing. The police when they arrived did not appear to care much, having been here multiple times in the last month for the same reasons.

I'm hitting my breaking point as far as how much I can tolerate my (and my toddler's) health & safety being threatened by living beside her. The door will need to be replaced again.

The garbage on her patio includes a giant pan of rotting shellfish, along with other indistinguishable rotten items & standard refuse. The smell of which is inescapable on my patio & now in the bedrooms as we need the windows open due to the heat.

I sincerely hope there is SOMETHING that can be done before September, even if it's just forcing a clean of her patio & installing security cameras.

Sincerely frustrated,

[reproduced as written]

A fourth report was handwritten, which I have transcribed, as follows:

Incident report for [R.M.]  
Thursday, July 29/2021

I was on my phone around 6:30 Am when I heard thumping noise at apt. [rental unit]. When I looked out I saw a man in black and orange shouldering the door of [rental unit] and pushing it or breaking it open – he went in as the neighbour in opposite suite on the left came outside – she was on the phone to Police she said. I then saw the disguised man with black scarf or neckerchief on his face and orange shirt or T shirt over black pants and shirt – leave the apartment holding a 3 foot long crow bar turn left and walk toward [indecipherable word]. He was a slim man about 5’10” or 5’9” who looked and moved like the man I had seen enter same apartment about one month ago when police came and broke down the door looking for someone or something the had entered with a key that last time.

I got dressed and ran outside with my phone/camera, but saw no one like him on street, so I went to the apartment to talk to the neighbour and wait for police.

Signature [redacted]  
[reproduced as written]

A fifth report dated July 28, 2021 from a tenant whose name was redacted was also handwritten. In this report the writer complained about the Tenant having accumulated garbage and food waste on her patio all summer. The writer noted a “giant pan of rotting shellfish on the shelf by the cedars” of the Tenant’s patio. The writer ended the report by saying:

I do not feel comfortable approaching her, but I need the garbage to be removed/disposed of properly ASAP as it is actively causing issues for my health. I can provide a doctor’s note stating such when my Dr. is back in the office early Aug (next week).

Please let me know how to proceed.

Thanks.

A sixth report dated July 29, 2021 states:

Subject: Noise at [Tenant's] door

Good morning

At about 6 ish this morning I heard a hell of a banging. I woke up cut out of my bed and went to the window and at that point I seen a door at [the Tenant's] flying out. So then I leave my bedroom and come around to my patio apparently that's when the guy left I never seen the guy. My neighbour next-door seen the guy apparently and went down to the town houses. The girl next to [the Tenant] called the police they finally came by then and the guy was nowhere around. This is not the first issue at this townhouse [rental unit address].

Thanks

[name redacted]

[reproduced as written]

In the hearing, the Agent, L.R., said that they served the Tenant with four notices of entry for inspections; however, she said they were unable to meet with the Tenant until August 17<sup>th</sup>. It was as to not smoking in her unit. The Agent said:

[R.M.] went downstairs; I went upstairs. I saw cigarette butts on the floor and on the patio, as well. As for the burning hair, her guest was a metal worker with a propane torch, which is not permissible in family housing units.

The Tenant responded to the Agent's comments:

The five people - I see all the witness statements from their package. Most was from the next door neighbour. Behind me – her vehicle was broken into, she sent multiple messages – she's gonna get me and she said 'you want to take the time for a minute, my car got gutted . . . I will destroy you, warning as of today.' She sent me pictures and said, 'you want to fucking know how you're affecting my suite.?' She's offered me cigarettes in her unit. Maybe that's why they smelled it.

As for cigarette butts, I've picked up butts on my property. I don't smoke in my unit. I've picked up butts on the walkway, and to keep the place tidy. I try to pick them up, because the Landlord will say that it's me.

They've entered my unit without my permission. They've also given me notice of a walk-through within one week of each other.



I have asked a couple times for the lock to be changed, yes, sometimes I can't be reached. Sometimes I don't have minutes on my phone. They have asked the police to be present on the last one. The police didn't have to be present.

I had asked for a lock prior. It took time for them to get back to me. [R.M.] refused to change my lock.

I asked the Agents why it would be unfair or unreasonable for the Landlord or other occupants of the residential property to wait for a one month notice to end the tenancy to take effect. L.R. said:

To ask this of all the other tenants who have been impacted by [the Tenant] and her guests? Children, seniors - it's unfair to put up with the fear and inconvenience and them looking over their shoulders, and being woken up in the night even a day longer. I sympathize with [the Tenant's] issues, but the continual damage to our property, and putting our property at significant risk, and the tenants being interfered with, that's why we stand by our position that she must be moved.

R.M. said:

I have spoken to the ... police when they attended. They described [the Tenant's] friends and, acquaintances as problematic. They even mentioned not to engage any of the people who come to her unit, because they are known to the police and they are not petty criminals; they will do things if cornered.

They support us in moving her along.

The Tenant responded, as follows:

I spoke with the police yesterday. It's just hearsay. My ex has been arrested, so there's no issue. They said that they did not get a subpoena, so there's no evidence of those claims. I am at risk . My safety was a concern. There was a caretaker in the building who was harassing me. Her name was [C.]. All of the complaints – thought I was smoking inside unit, because I sprayed air freshener in my unit.

They did two back-to-back, but they can't do them within 30 days of each other; they did two. [Y.] had mentioned noise before, and police being called. She's said

things like my son being noisy, because the next-door neighbour called the police because my son was playing video games.

When [Y.] did the walk-through, she talked about my son saying 'he hasn't learned to be quiet'.

I feel like I didn't get a change to stay . I have been singled out and targeted and harassed . My door was breached, and I called the police myself. But since then, my ex- husband was arrested. I'm doing everything that I can. I wanted to get a lock on my door. They were very aggressive toward me.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

In order to establish grounds to end the tenancy early under section 56 of the Act, the landlord must not only establish that he has cause to end the tenancy, but that it would be unreasonable or unfair to require the Landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the documentary evidence and the testimony of the Landlord, I find that they have met that burden.

I accept the Landlord's evidence that the Tenant or someone she has allowed on the property to have significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property.

Despite the Tenant's denial, I find from the evidence that it is more likely than not that she or people she has allowed in the rental unit has smoked in the rental unit. The Tenant did not deny that the Agents found cigarette butts in the rental unit and on the patio. Rather, she said she picks up other people's butts, because she is afraid the Landlord will think they are hers.

I agree with the Tenant that the police comments from the Agent are hearsay. However, hearsay is allowed in administrative hearings; it is just given less weight than is other evidence. I find that the reports from the police are very concerning, and that they contribute to the overall impression I have of the Tenant, based on the testimony and documentary evidence submitted by the Landlord.

I find that the bulk of the Tenant's testimony consisted of complaints about how she is

treated by the Landlord's agents, rather than it being evidence contrary to that of the Landlord.

I find that the Tenant has instilled an environment of fear and disturbance among the other occupants of the residential property. I find that the Landlord's property is put at risk by people breaking in, by the smoking, by the loud noises at any time of day and night. I find such activities, along with police having to be called to the residential property multiple times would cause the Landlord, and the other tenants to be unreasonably disturbed.

Due to these conclusions, I therefore find that the Landlord has proven that the Tenant has significantly interfered with or unreasonably disturbed another occupant(s) and the Landlord, as well as having put the Landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for the One Month Notice to End Tenancy to take effect, as I find without the early termination of the tenancy, they are less likely to be able to preserve their property.

I therefore grant the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act. I also award the Landlord with recovery of their \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. The Landlord is authorized to retain \$100.00 of the Tenant's \$414.50 security deposit in complete satisfaction of this award.

### Conclusion

The Landlord's Application is successful, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is awarded an Order of Possession for the rental unit in this regard.

The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit in full satisfaction of this award.

Pursuant to section 56 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 13, 2021

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Residential Tenancy Branch