



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOPHIA HOMES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET FFL

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early for health or safety reasons, receive an order of possession, and to recover the cost of the filing fee.

An agent for the landlord, FH (agent) attended the teleconference hearing and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and an opportunity to ask questions was provided to the agent. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated September 2, 2021 (Notice of Hearing), the application, documentary and digital evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, application, documentary and digital evidence on a USB thumb drive were served by registered mail on September 2, 2021. The registered mail tracking number has been included on the style of cause for ease of reference. According to the online Canada Post registered mail tracking website, the notice card was left for the tenant who has yet to pick up the registered mail package. Pursuant to section 90 of the Act, I find the tenant was deemed served with the Notice of Hearing, application and documentary/digital evidence as of September 7, 2021. I also consider this matter to be undisputed by the tenant. Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email address at the outset of the hearing and provided an email address for the tenant, which was on the tenancy agreement. As a result, this decision will be emailed to both parties.

#### Issues to be Decided

- Is the landlord entitled to end the tenancy early and obtain an order of possession for health or safety reasons under section 56 of the Act?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on May 1, 2021. Monthly rent is \$1,400.00 per month. The tenant paid a security deposit of \$1,000.00 at the start of the tenancy.

The agent presented a video clip, #1, which the agent stated the tenant's male friend threatened to rape the landlord agent. The agent stated that they also go by the name of "Naz" and the male can be heard yelling very loudly and aggressively the following on the video clip:

"Fuck you! You wanna see my dick? ....

"Naz...I'll fucking rape you! Fucking come down here!"

The agent stated that this occurred on June 1, 2021 and the agent was unaware that they could apply for an early end of tenancy, which is why they waited until August 20, 2021 to apply. The agent was crying during the hearing and was obviously traumatized by this incident.

## Analysis

Based on the undisputed testimony provided during the hearing, and the digital evidence before me, and on a balance of probabilities, I find and I am satisfied that the tenant's guest, an unknown male has committed an illegal act, including but not limited to Uttering Threats, that has adversely affected the physical well being of the landlord/or their agent. I also find the tenant's guest yelled in such a way and for such a prolonged period that they significantly disturbed the landlord.

Section 56 of the Act applies and states:

### **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.**

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

[Emphasis added]

I am also satisfied that it would be unreasonable and unfair to the landlord or their agent to wait for a notice to end tenancy under section 47 of the Act. I find the actions of the tenant's guest, an unknown male and the evidence before me to support that the tenant's guest threatened sexual assault (rape) of the landlord agent. **I find any threats of sexual assault or rape is unreasonable in any tenancy.** Therefore, pursuant to section 56 of the Act, I grant the landlord an order of possession for the rental unit effective not later than **two (2) days** after on the tenant. I find the tenancy ended the date of this hearing, September 21, 2021 pursuant to section 62(3) of the Act.

As the landlord's application is successful, I grant the landlord **\$100.00** for the recovery of the cost the filing fee under section 72 of the Act. As the agent requested to offset this amount from the tenant's security deposit, I find the tenant's security deposit is now \$900.00 effective immediately pursuant to section 62(3) of the Act.

### Conclusion

The landlord's application is successful.

The tenancy ended this date, September 21, 2021.

The landlord is granted an order of possession effective two (2) days after service on the tenant.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord for service on the tenant. This order may be enforced through the Supreme Court of British Columbia.

The landlord has been granted \$100.00 for the filing fee and is authorized to retain that from the tenant's security deposit. I find the security deposit is now \$900.00 as a result as noted above.

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*. Pursuant to section 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: September 21, 2021

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Residential Tenancy Branch