



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's 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.

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 landlords were assisted by their son ("**JS**") and daughter-in-law ("**RAS**").

### Preliminary Issue – Service

The landlords made their application on August 30, 2021. They received the Notice of Dispute Resolution Proceeding package from the Residential Tenancy Branch (the "**RTB**") on September 10, 2021. They served this notice and a supporting evidence package on the tenant personally on September 10, 2021. The tenant confirmed receiving these documents.

On September 20, 2021, the landlords served the tenant with a written statement of the landlords in which they provided responses to some of the allegations contained in the tenant's evidence. They also provided this statement to the RTB as evidence.

This hearing was brought on an expedited basis. For an expedited hearing, the RTB Rules of Procedure require that an applicant submit all documentary evidence to the RTB at the same time the application is made and serve the respondent with all evidence they intend to rely on at the hearing when they serve the notice of expedited hearing. The landlords did not comply with this rule. However, as the document submitted on September 20, 2021 was simply a written statement from the landlords, they would have been nothing preventing them from reading the statement aloud at the hearing, and having its contents entered into evidence via testimony. As such, in the interest of efficiency, I found it appropriate to allow the September 20, 2021 document into evidence. The tenant was permitted to make submissions in response to the written statement.

The tenant submitted numerous documents to the RTB and to the landlords on September 10, 11, 12, 22, and 23, 2021. The Rules of Procedure require that a

respondent to an expedited hearing serve all their evidence on the applicant “at least” two days before the hearing. The Rules defines day

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

The hearing was on September 24, 2021. As such, the evidence served on September 22 and 23 were served late. Of these documents, two are affidavits of the tenant. One was previously served. The other affidavit, dated September 23, 2021, amounts to a written statement of things the tenant did between August 26 and September 20, 2021. As with the landlords’ written statement, nothing would have prevented the tenant from reading this document aloud during the hearing. As such, I admit it, but not its exhibits (which could not have been read aloud) into evidence. I exclude all other documents submitted on September 23 and 24, 2021 from evidence.

### **Issues to be Decided**

Are the landlords entitled to an order of possession on an expedited basis?

### **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 entered into a tenancy agreement starting October 21, 2019. Monthly rent is \$710 and is payable on the first of each month. The tenant paid the landlords a security deposit of \$375. The landlords still retain this deposit. The rental unit is a lower suite in a single detached house. The landlords live in a unit on the upper level. The lower level has a third, self-contained unit, occupied by another tenant (“**SH**”).

The landlords allege that the tenants’ conduct has become increasing erratic over the past two to three months. On July 26, 2021, the landlords served him with a One Month Notice to End Tenancy for Cause (the “**Notice**”). The tenant disputed the Notice. The landlords applied for an order of possession and monetary order for unpaid rent. The matter is set to come to a hearing before an arbitrator of the RTB in December 2021. The landlord served the tenant with a notice of dispute resolution for that application on August 26, 2021.

The landlords testified that this triggered the tenant to increase his erratic behavior. They testified that he follows them around the exterior in an intimidating manner of the house when they go outside. They submitted a surveillance video of the tenant exiting the rental unit, walking around the side house and towards landlord SZ on the driveway. As he walks past, he wags his finger at her saying something, then stops, turn around

to face the SZ and continues to speak at her. There is audio on the recording, but the body language of the tenant suggests he was speaking at a loud volume or in a forceful manner. He then returns to the rental unit. Throughout SZ does not engage with the tenant. JS stated that this incident was illustrative of other interactions with the tenant.

JS stated that as a result of these sorts of interactions, the landlords stayed inside their house more than they would have liked to, so as to avoid confrontations with the tenant. He testified that they now feed their dogs in the garage, rather than outside. The tenant has peered into the garage while they are doing this, and this makes them feel very uncomfortable. They submitted a video and photograph of him doing this.

In a written submission they submitted in their evidence, the landlords wrote:

The most terrifying time for us was right after we served him the RTB Notice of Dispute Resolution Proceeding on August 26. [The tenant] began banging on the interior walls of the house, shaking the entire house in the process. He did this into the evening and continued early in the morning the next day. (See *Audio 2, Video 4*) The loud banging was very frightening and the wall was shaking. Our other tenant told us that his family could also hear the banging and that his two daughters were very frightened.

I have reviewed the video referenced in this statement. In it, very loud banging can be heard over the course of one minute. The landlords submitted a translation of what they were saying in the video. In it, they confirmed the date, and stated that “the whole house is shaking” and that “this is not the first time. [The tenant] bangs like this all the time”.

The landlords also submitted a letter from SH dated August 23, 2021 into evidence. In it, SH states that in the past several weeks the tenant’s behaviour had worsened and is affecting the Physical and mental health of [his family closed bracket. He wrote that his family has repeatedly found garbage, leftover food, and random objects in his mailbox.

Almost daily, SH has had to remove these objects and put them in the trash can in order to access his mail. He also wrote that on August 20, 2021, he heard incessant pounding on the wall from the rental unit which caused the whole house to shake, scared his dog, and caused his wife and children to run outside in fear.

The landlords provided photographs dated August 13 and 18, 2021 of garbage in a mailbox outside of the rental residential property. Additionally, they submitted a video of the tenant and another man reaching into a garbage can on the driveway of the residential property and retrieving a white plastic bag. The tenant then took the bag from the garbage can, walked to the mailbox, placed it inside, and then walked away, back towards the rental unit.

The landlord testified that the tenant urinated in the backyard and damaged one of the security cameras with a dustpan.

The landlords also submitted a photograph of the tenant peering into SH's bedroom window.

The tenant denied peering into SH's bedroom window. He testified he was cleaning something up on the ground near the window in a crouched position facing the window. He argued that the landlord submitted a photo of this, rather than a video, because a video would show that his actions were entirely innocent, whereas a single frame from the video made him appear to be peering into the bedroom.

The tenant denied placing garbage in SH's mailbox. He testified that the photographs of the garbage in the mailbox were staged by the landlord. He testified that the video of him placing garbage in the mailbox was correct but taken out of context. He testified that the landlord had placed a meal delivery meant for him in the garbage. He testified that the delivery driver had left it in the mailbox for him to pick up. He testified that he knew the landlord's security camera was recording him, so he took the meal out of the garbage can and placed it back in the mailbox to show the landlords he knew they threw out his food.

The tenant admitted to urinating in the backyard but testified that he only did so because the lock to the rental unit was not working, and he had nowhere else to go. He testified that the landlords called the police on him for public urination and that the police detained, then released him, advising him that this was a civil (and not a criminal) matter.

The tenant admitted to pounding on the walls on August 26, 2021. He testified that he suffers from PTSD, anxiety, and depression stemming from a motor vehicle accident he was involved in in 2017. He submitted a letter from his doctor confirming this. He testified that his loud outbursts and pounding on the walls are caused by his medical condition, as he acts like this when he gets scared. In a letter he submitted into evidence written to SH, he wrote that one screaming incident in October 2019 was triggered due to SH's dog barking. In another letter to SH, written in response to SH's letter mentioned above, the tenant wrote:

However, your effort for fabricating criminal libel on me did brought my suicide ideation back. On August 26, 2021 when I reviewed your statement, I knocked my head on the wall trying to hurt myself. Police was called and I give my explanation to police for why I knocked my head on the wall.

The tenant argued that the landlords' application was not motivated out of fear for their safety or legitimate concerns about his conduct, but rather by a desire to have an empty suite which they could re-rent for a higher monthly rent.

## **Analysis**

Section 56(2) of the Act 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.

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlords must prove it is more likely than not that the tenant acted in such a way as to satisfy the requirements of section 56(2)(a) and (b). Based on the testimony of the landlords, their written statements, the letter from SH, and the photographic and video evidence submitted, for the reasons that follow, I find that they have done so.

I accept the landlords' testimony that the tenant would regularly confront them outside the rental unit. I accept their testimony, which the tenant did not dispute, that the video they submitted of one such occurrence is illustrative of the type of encounter they had with the tenant. I also accept their undisputed evidence that the tenant would peer into

the garage to continue to try to engage with the landlords. I accept the landlords' evidence that they were distressed by this conduct.

I also accept the landlords' evidence that the tenant has placed garbage in SH's mailbox on more than one occasion. I do not find the tenant's explanation as to why he did this on the occasion that he was recording to be particularly believable. I do not find it reasonable that he would place garbage (even an item improperly discarded by the landlords) in SH's mailbox as a means of communicating to the landlords that he knew they took out his food. I cannot say why, for example, he would not have left it on their doorstep or written them a note. I fail to see the connection between SH's mailbox and the landlords, or how his placing the discarded meal therein would communicate the desired message to the landlord. In any event, even if I accept the tenant's explanation as true (which I do not), his action still would have amounted to him putting garbage in SH's mailbox, while SH was entirely innocent of causing his meal to be discarded.

As I do not find the tenant's explanation to be credible, I prefer the landlord's explanation, and accept that the incident caught on tape was part of a larger campaign of harassment against SH. I accept the other photographs the landlord submitted of garbage in SH's mailbox as true. Based on the incident caught on camera, I find it is most likely that the tenant placed these items in the mailbox.

The tenant has not disputed that he pounded on the walls of the rental unit on August 26, 2021. Rather, he blames SH's allegations contained in the letter in the landlord's evidence package to have caused him to have suicidal ideation and that the pound on the walls was a form of self-harm. Regardless of the reason for the tenant's actions, it is not disputed that the tenant caused the noise as recorded in the landlords' video. I find that the volume and frequency of the noise was both severe and unreasonable. I also find that this amounted to an unreasonable disturbance of both the landlords and SH. I explicitly make no findings as to the tenant's current mental state (and based on his doctor's 2017 letter, I accept that he suffered from PTSD). It is not necessary for me to make such findings, as, even if his mental state is as he alleges, it does not give the tenant leave to disturb the other occupants of the residential property.

I find that the incidents stated above, when considered collectively, amount to unreasonable disturbances of the landlords and SH. As such, I find that the landlord have satisfied the requirements of section 56(1)(a) of the Act.

I find that it would be unfair to the landlords and to SH to make them wait to end the tenancy pursuant to section 47 of the Act. The tenant has demonstrated a pattern of harassing and, at times, erratic behavior over a sustained period of time. I do not find it reasonable to extend this period of time any longer. As such, I find that the landlords have satisfied the criteria at section 56(2)(b) of the Act.

As such, I grant the landlords an order of possession effective two days from it being served on the tenant by the landlords

**Conclusion**

The landlord has been successful in their application.

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached order(s) by the landlord.

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: October 12, 2021

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Residential Tenancy Branch