



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:11 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlords HK (the landlord) and DL attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness SL also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, their witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on September 24, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail, the tenants are deemed to have received the materials on September 29, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

### Issues to be Decided

Are the landlords entitled to:

1. an order for early termination of a tenancy?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on August 01, 2021. Monthly rent of \$2,100.00 is due on the first day of the month. The landlords collected and hold a security deposit of \$1,050.00 and a pet damage deposit of \$300.00. The tenancy agreement was submitted into evidence.

The landlord affirmed tenant ED threatened the lower unit tenant on August 13, 2021 and the police is investigating tenant ED. The landlord submitted into evidence an email sent by the lower unit tenant on August 13, 2021:

Absolutely a nightmare situation. Things have escalated to where ED felt the need to come downstairs last night and threaten to punch my grandson in the face. Due to the fact the ED's son who kept me up most of Saturday night and all night Sunday with the exception of 2 hours. So Monday morning I yelled at [redacted] from only having 6 hours sleep from Saturday to Sunday. It is not problem that these guys have drug addictions and sleep during the day. I won't apologize for getting mad due to lack of sleep to disrespectful people.

Witness SL affirmed he is a real estate agent, he is aware that tenant ED threatened the lower unit tenant on August 13, 2021 and the police are investigating tenant ED.

Landlord DL affirmed that on September 16, 2021 she attended the rental unit to talk with tenant ED and an occupant of the rental unit pushed her. The police arrested the occupant, and a hearing is scheduled for January 2022. The landlord submitted a police document with a file number.

Witness SL affirmed that an occupant of the rental unit pushed landlord DL on September 16, 2021 and the police is investigating the occupant.

The landlords submitted this application on September 21, 2021.

### Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (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.

Residential Tenancy Branch Policy Guideline 51 states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

**The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it**

**would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).**

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed convincing testimony offered by the landlords and witness SL, the email dated August 13, 2021 and the police file number, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, that tenant ED has seriously jeopardized the safety of other occupants of the rental building by threatening the lower unit tenants and that an occupant of the unit pushed landlord DL. I find the tenant's behaviour is a significant threat to the safety of the landlord and other occupants of the rental building.

If the landlords issued a notice for cause under section 47 of the Act, the landlords could not end the tenancy earlier than one month after the date the notice is received by the tenants. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlords to wait to end the tenancy by issuing a notice for cause due to the significant threat to the safety of other occupants of the rental building and the landlord caused by the tenant and the occupants of the rental unit.

I grant an order of possession effective two days after service on the tenants, pursuant to section 56(2) of the Act.

As the landlords are successful in this application, the landlords are entitled to recover the filing fee.

Conclusion

I grant an order of possession to the landlords effective **two days after service of this order**. Should the tenants fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b), the landlords are authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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 26, 2021

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Residential Tenancy Branch