



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      ET

### Introduction

This expedited hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 56.

The agents CA, SN and KC attended for the landlord (“the landlord”) and had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 19 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. They testified the hearing was not recorded.

The landlord provided their email address to which the Decision shall be sent.

### Service upon Tenant

As the tenant did not attend the hearing, the issue of service was addressed.

This application is under Rule 10 for an expedited hearing to be heard on short notice to the Respondent. Expedited hearings are for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Rule 10 of the Rules of Procedure set out the rules for service by the applicant in applications of this type. Within one day of the Notice of Dispute Resolution Proceedings Package being made available by the RTB, the landlord must serve each tenant with stated documents including the Notice of Dispute Resolution Proceeding and the evidence.

Rule 10.3 states as follows:

#### **10.3 Serving the notice of dispute resolution proceeding package**

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

The Director's Order of June 26, 2019 sets out timelines for service. Because service and response time limits are shorter than usual, the permitted methods of service are restricted. If the hearing date is between six and 11 days after the date the application is made, the applicant must serve the package:

- by leaving a copy with the person
- if the person is a landlord, by leaving a copy with an agent of the landlord, or
- if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

If the hearing date is between 12 and 16 days after the date the application is made, the permitted service methods are:

- by attaching a copy to a door or other conspicuous place at the address at which the person resides

- if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord, or
- by emailing a copy to an email address provided as an address for service by the person

If the hearing date is between 17 days or more after the date the application is made, the permitted service methods are any of the methods set out above, or by sending a copy by registered mail to the tenant's residential address.

The landlord submitted the application on October 14, 2021. The RTB scheduled the hearing for today, November 4, 2021, that is, 20 days later.

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution by posting to the tenant's door of the unit on October 21, 2021, 13 days before the hearing in compliance with the third method above.

The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form.

In consideration of the landlord's evidence, I find the landlord served the tenant on October 24, 2021 with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

#### Tenant's Evidence

The tenant's evidence was submitted late according to Rule 10 which states as follows:

#### **10.5 Time limit for respondent's evidence**

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

### **10.6 Late evidence**

If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 provides that evidence not provided to the other party in accordance with the Act may be considered depending on whether the party can show to the Arbitrator that is new and relevant evidence and that it was not available.

The tenant did not attend the hearing to explain the submission of late evidence and to establish that it is new and relevant. Therefore, I find the evidence is not admissible and will not be considered.

### Issue(s) to be Decided

Is the landlord entitled to the relief requested?

### Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The landlord submitted called two witnesses, submitted eight letters of complaint regarding the tenant, and provided substantial testimony. Not all of this evidence is repeated or referenced in the Decision. Only selected evidence is referred to.

The landlord submitted a copy of the agreement with the tenant. They testified as follows with respect to the tenancy background:

Information	Details
Type of building in which unit is located	Multiple apartment building with many families
Type of tenancy	Monthly
Monthly rent payable on first	\$282.00
Security deposit held by landlord	\$388.00
Pet deposit	\$388.00

The landlord made the following written submission in the application and testified as to the veracity:

[Tenant] residing in [the unit] and her guests pose a threat to the safety of other tenants and children residing [in building] due to guns, weapons, and drug paraphernalia on the site. We have received reports from tenants and agencies representing tenants about the threat to physical and mental safety of other tenants. [The landlord] received reports that June 2, 2021 police attended the unit with flash grenades and tactical gear to raid the unit (police file #xx).

The landlord called AC as a witness who provided affirmed testimony. AC stated she moved out of the building on January 28, 2021 because she no longer felt safe life in the building because of the tenant's disruptive behaviour, the type of guests coming and going to the unit all the time, and her belief the tenant was selling drugs and lived a

violent lifestyle. AC stated the sounds of yelling were heard from the unit at “all hours”. AC stated that AC’s son was afraid to play outside because of the type of unsavoury people that visited the tenant’s unit. She stated that a guest of the tenant entered her unit and was “clearly high”. Since moving, AC said the family is undergoing counselling to deal with the fear and feelings of lack of safety caused by the tenant’s behaviour.

The landlord called the witness JU who provided testimony; as well, a copy of his written complaint to the landlord dated June 3, 2021 was submitted. Ju testified as follows. His unit is immediately adjacent to the tenant’s. Sounds of yelling and a dog barking come from the unit frequently. People come and go from the unit at all times and the tenant and her partner are engaged in “openly dealing drugs” as well as other illegal activities. The police are called to the unit often. There are many children in the building (including JU’s child) and “they are all scared” and “traumatized” from the tenant’s behaviour.

Ju testified that recently a guest of the tenant “smoked meth” in the parking lot and there were “clouds of meth”. When JU asked the guest to move because the smoke was getting in the building and they were blocking the parking area, the guest “pulled a gun on me”. JU testified he thought he was going to be killed. Shortly after that, JU observed the tenant getting into that same guest’s car and driving away.

JU described the police presence on June 2, 2021 at the unit as follows:

“[The RCMP} were here in full force with a small ramming tank like vehicle, dogs, flash grenades and in full tactical force fear. There was well over 25 police here blocking off the street and surrounding the building. They tossed in a flash bang type grenade and used the tank vehicle to push open the door. The police found an assault type weapon, drugs, \$3,000 in cash, stolen property and scales”

The landlord submitted the witness statement of SN who stated that she has observed guests of the tenant “smoking crystal meth” and saw the incident with the gun reported by JU and described above. The actions of the tenant are causing her “to feel unsafe most of the time here due to all the various strange and sketchy people coming and going from [the unit]”. SN stated as follows: “

This is supposed to be a family complex [...] Who’s to say that somebody isn’t going to get seriously hurt please, please, please address this issue [...]

The landlord submitted three warning letters to the tenant, copies of which were provided, and testified that tenant’s behaviour continues unchanged.

The landlord stated the tenant still lives in the unit.

The landlord requested an immediate end to the tenancy and an order of possession.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

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 this case, the onus is on the landlord.

Section 56(1) of the Act permits a landlord to 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 of notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section 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.*

Expedited hearings are for serious matters; they are scheduled on short timelines and on short notice to the respondent.

*Policy Guideline 51 – Expedited Hearings* provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.

The Guideline states in part as follows:

*Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing.*

*These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.*

*...*

*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.*

To grant an Order of Possession under section 56(1), I must be satisfied as follows:

56 (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 in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenant had:

- (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;*

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established both grounds, that is, that the tenant has significantly interfered with or unreasonably disturbed people living in the building, and the tenant has seriously jeopardized the health and safety of the occupants of the building, specifically JU, who was threatened with a weapon by a person I find was the tenant's guest.

I find the tenant has disturbed occupants of the building by creating noise at all times of the day/night. I find the tenant has guests of an undesirable character who come and go at all hours, and one of whom has drawn a weapon on the tenant's neighbour who thought his life was in danger. I accept the evidence in the many tenant complaint letters that the tenant and/or guests are openly consuming illegal drugs, behaviour which is disturbing to all occupants and specifically children who are understandably upset and afraid as a result. I accept the evidence that the tenant's behaviour has resulted in the police attending the unit many times thereby disturbing other occupants who are anxious and afraid.

I find the landlord provided credible testimony and sufficient supporting evidence. I find the landlord has established that the events happened in the manner to which they testified. I find the landlord's account of what took place to be reliable and believable.

I find the landlord has shown that there is a reasonable risk of danger or harm to the occupant JU and a risk of ongoing disturbance to the occupants of the building.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to both sections.

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

*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.*

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the violence exhibited by the tenant's guest, the pattern of disruptive behavior over many months, and the nature of the unacceptable conduct.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward.

### Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 04, 2021

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Residential Tenancy Branch