



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

The hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- authorization to recover the filing fee for this application pursuant to section 72.

The Landlord, the Landlord's legal counsel ("JT") and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Two witnesses ("DR" and "IS") attended the hearing when required to provide oral testimony.

I informed the parties that the Residential Tenancy Branch Rules of Procedure ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

### Preliminary Matter – Service of Notice of Dispute Resolution Proceeding by Landlord

The Landlord testified that the Notice of Dispute Resolution Proceeding ("NDRP") and the Landlord's evidence (collectively the "NDRP Package") was served by posting it on the door of the Tenant's bus (the "Bus") that was parked on the residential premises ("Premises"). The Tenant stated that he found that NDRP Package located at the top of the entry door to the Bus. The instructions provided to the Landlord with the NDRP by the Residential Tenancy Branch ("RTB") specified that the Landlord was to serve it in person, on the Tenant's door of the rental unit or by registered mail in accordance with section 89 of the Act. The Landlord was also instructed to file a completed Form RTB-9 after service of the NDRP with the RTB.

Notwithstanding the Landlord used a method of service did not comply with the instructions provided by the RTB, nor did the Landlord file the completed Proof of Service of the NDRP on Form RTB-9 with the RTB, the Tenant acknowledged he received the NDRP Package on the door to the Bus. I find that the NDRP Package was sufficiently served on the Tenant in accordance with section 71(2)(b) of the Act.

#### Preliminary Matter – Service of Tenant's Evidence on Landlord

The Tenant stated he served the Landlord with evidence on a USB stick on January 10, 2021, being the day before this hearing.

Rule 10.5 of the RoP states:

#### **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

As the Tenant's evidence was served on the Landlord less than 2 days before the hearing, I find that it does not comply with Rule 10.5. Based on the above, I will not accept the Tenant's evidence for this hearing.

#### Preliminary Matter – Conduct of Parties

#### **3.6 Evidence must be relevant**

All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution. The arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant.

## **6.1 Arbitrator's role**

The arbitrator will conduct the dispute resolution process in accordance with the Act, the Rules of Procedure and principles of fairness.

### **6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing**

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the end of these proceedings, I advised the parties that I would make findings of relevant facts and make the determinations applicable to determining whether the tenancy should be ended pursuant to section 56 of the Act. The Landlord and JT insisted that I disclose in my decision all of the information set out in the statutory declarations submitted by the Landlord, DR and IS. I advised that the parties I would only be disclosing the information and findings of facts that are necessary to make the required determinations in reaching my decision on whether to end the tenancy. JT stated that I was required to disclose all information set out in the statutory declarations that were submitted into evidence as these were "public records". I again informed the parties that I would only be making findings of fact that were relevant to making determinations as required by section 56 of the Act. JT then made a veiled threat of consequences if I failed to disclose all information in the public records. I interpreted this to mean that there would be consequences to me as the arbitrator of these proceedings if I failed to disclose all of the contents of the statutory declarations and the evidence given by the Landlord and witnesses at the hearing. This resulted in a loss of decorum of the proceedings and the Tenant made an outburst as a result of the demands of the Landlord and JT.

I am required to perform my functions as an arbitrator in accordance with, among other things, the requirements of the Act, Residential Tenancy Regulations, *Residential Tenancy Branch Rules of Procedure* and *Residential Tenancy Branch Policy Guidelines*. I am also required to ensure that all aspects of the hearing are conducted in accordance with the requirements for procedural fairness. Furthermore, I am required to ensure that I comply with the privacy protections afforded to persons under the

*Freedom of Information and Protection of Privacy Act*. I must also be cognizant of other provincial and federal laws that may apply to administrative proceedings under the Act and to any the disclosures made by me in decisions I issue including, but not limited to, section 7 of the *Canadian Charter of Rights* on “Legal Rights” which states:

**Life, liberty and security of person**

**7** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

A party to a proceeding under the Act is entitled to submit any evidence they believe is relevant in the proceedings. A party is entitled to make submissions on what they believe are the facts or the law or what they think I should do, consider or order. However, it is totally improper for a party to demand that I disclose information or evidence that I do not believe has been established on a balance of probabilities or where such facts are not essential for me to make the relevant to making findings of fact or making determinations on the issues arising from the claim or claims of the applicant. To reveal information that is not relevant could have wide ranging consequences to a party to a proceeding including prejudicing their rights under other provincial or federal legislation and revealing such unnecessary information could potentially prejudice third parties who are not even present at the hearing. The conduct of the Landlord and JT was on the verge of abuse of process.

Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord’s application and my findings are set out below.

The Landlord testified that there was no written tenancy agreement. The Landlord submitted a statutory declaration ("Landlord's SD") she had sworn on December 10, 2021 and affirmed the facts contained in that statutory declaration. The Landlord testified that the living arrangements with the Tenant were made between the parties orally and by text messages. The Landlord stated that the Tenant was initially engaged to perform work on a basement suite ("the Suite") for which the Landlord owed the Tenant \$11,110.00. The Landlord stated the Tenant finished the work on the Suite built in the basement Premises in February 2021. The Landlord stated that the Tenant texted her on March 2, 2021 and proposed that he rent a room in the basement and work off the \$11,110.00. The Landlord stated she and the Tenant came to an agreement that the Tenant could stay in a bedroom in the Suite for period of 6 months from March 1 to August 31, 2021, in exchange for reducing the amount owed by the Landlord to the Tenant by \$600.00 per month. The Landlord submitted a text message dated March 2, 2021, wherein the Tenant proposed 50% of the amount owing would be exchanged for 6 months room and board from March to August. The Landlord stated that the Tenant brought the Bus with him which he parked on the Premises.

The Landlord stated that DR, who is the Landlord's mother, occupied another bedroom located in the Suite. The Landlord stated that DR paid \$1,000.00 per month to rent her bedroom in the Suite. The Landlord stated that that the Tenant and DR shared a kitchen and a bathroom located in the basement suite. The Landlord stated that she did not use either of the kitchen or the single bathroom located in the Suite and that the Tenant and DR shared the kitchen and one bathroom located in the Suite.

The Landlord testified that, after the Tenant moved into the rental unit, there were noticeable changes in the behavior of DR. The Landlord testified that on or about July 1, 2021, being DR's birthday, DR came to her and showed her an object ("Object"). The Landlord stated that DR told her that the Tenant had given the Object to her as a birthday present. The Landlord stated that approximately one week later, DR spoke to her again and told her that DR found the Object in the bedside table located in her bedroom. The Landlord stated the bedside table is located on the far side from the door to DR's bedroom.

The Landlord testified the Tenant had agreed to leave his rental unit sometime in August 2021. However, due to difficulties locating rental units in the area, the Landlord stated she agreed the Tenant could stay until September 30, 2021 to move out the rental unit. The Landlord stated that, at the beginning of September of August 2021, the Tenant moved out of the rental unit so that IS, the Landlord's ex-husband, could move

into the Tenant's rental unit. The Landlord stated she discovered several days later that the Tenant was sleeping in the Bus. The Landlord stated she never told the Tenant that he could live in his Bus.

The Landlord testified that on November 3, 2021 she witnessed the Tenant physically assault IS. She stated that she called the police and they told her that even though the Tenant's term was up and he had agreed to move, the Landlord had to give the Tenant an eviction notice. The Landlord stated that she called a company to tow the Bus from the residential Premises but they would not do so as the Tenant was living in the Bus. The Landlord submitted that the Tenant was trespassing on the Premises when he started living in the Bus.

The Landlord admitted that no charges had been laid against the Tenant in respect of the assault she alleges occurred between IS and the Tenant nor were there any orders given by the police that would restrict access of the Tenant to the Premises. The Landlord stated that the police advised her that she would need to contact the RTB respecting procedures to end the tenancy with the Tenant.

DR submitted a statutory declaration ("DR's SD") she swore under oath on December 10, 2021 and she affirmed the contents of that declaration at the hearing. DR testified that, since the Tenant moved into the rental unit, there were numerous incidents involving the Tenant that had caused her emotional distress. DR testified that the Tenant had given her the Object on her birthday which she stated she returned to him. DR testified she discovered that the Object was later placed in her nightstand drawer and that she took it and showed the Landlord. A picture of the Object was attached as an exhibit to the DR's SD. Also attached as an exhibit to DR's SD was a letter from a physician ("Physician's Letter") which stated in part:

[DR] has been experiencing significant emotional distress, due to her current situations, on her property.

Reportedly, there is a male person, and he has been physically intimidating her. She is fearful for her well-being, physically and emotionally.

She has experienced anxiety and has symptoms suggestive of posttraumatic stress disorder. Her blood pressure has also been significantly elevated, which can put her health in jeopardy.

The Tenant testified the tenancy commenced on March 5, 2021. He stated the living arrangement with the Landlord was that he was entitled to live in the bedroom for a fixed term of six months and 25 days with the result that the tenancy would end on September 30, 2021. The Tenant stated he was never provided with any keys to access the rental unit. He stated that he either rang the doorbell, called to gain entry or would crawl through the window of his rental unit. The Tenant testified he started living in the Bus sometime around the beginning of September although it wasn't clear from his evidence whether he had voluntarily moved from his rental unit or was denied entry by the Landlord. The Tenant denied all of the allegations made by the Landlord, DR and IS regarding a variety of incidents set out in their statutory declarations and testimony. The Tenant did not provide any testimony or evidence that any other person had access to the rental unit other than for himself, DR and the Landlord at the time of the incident involving the Object.

The Tenant testified that the Landlord has not allowed him to recover all of his personal possessions from the rental unit. The Tenant stated that he wanted to vacate the property but was concerned that the Landlord would not pay him what she still owed him for the work he had performed for the Landlord.

### Analysis

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 the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

Sections 2(1), 4 and 5 of the Act state:

- 2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply o*], this Act applies to tenancy agreements, rental units and other residential property.
- 4 This Act does not apply to
  - (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,

- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that
  - (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,
  - (ii) in a continuing care facility under the *Continuing Care Act*,
  - (iii) in a public or private hospital under the *Hospital Act*,
  - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.



- 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The Landlord testified that she did not use the kitchen and/or bathroom facilities of the Basement Suite. Accordingly, the tenancy was not excluded from the provisions of the Act by virtue of section 4(c) of the Act. I find that there was an oral tenancy between the Landlord and Tenant to which the provisions of the Act applied. As such, the “standard terms” were imputed to the tenancy pursuant to section 12 of the Act. Pursuant to section 5(1) of the Act, the Landlord may not avoid or contract out of the Act or the *Residential Tenancy Regulations*.

Section 1 of the Act defines “rent” as:

“rent” means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

The Landlord submitted that there was no tenancy under the Act as the Tenant was not paying rent. However, section 1 of the Act states that rent includes value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities. I find that the debt owed by the Landlord had value that was exchanged by the Tenant in return for the right to possess the rental unit and that the parties agreed the rent would be a paydown of the debt on the basis of \$600 per month.

The Landlord testified that DR had her own room in the basement suite and that DR paid \$1,000.00 per month to occupy that room. I find that DR was a tenant and that the bedroom DR occupied was a rental unit for the purposes of the Act and that she had the right to access, and use of, the kitchen and bathroom in the Suite. DR was therefore an

occupant of the Premises. I find that Tenant was a tenant as defined by the Act and that the bedroom occupied by the Tenant was a rental unit for the purposes of the Act and that the Tenant had access to, and use of the kitchen and bathroom in the Suite.

The Landlord testified that DR spoke to her immediately following the discovery by DR that the Tenant had entered DR's rental unit. DR testified that the Tenant had entered her rental unit without her consent. The Tenant denied entering DR's rental unit. I found the testimony of DR to be sincere, compelling and credible. Furthermore, as the Landlord provided evidence corroborating DR's testimony regarding the Object and the unauthorized entry by the Tenant into DR's rental unit, I prefer the testimony of DR. I find that the Tenant entered DR's rental unit without her consent and without a reasonable reason for such entry. Regardless of his intentions, the Tenant's unauthorized entry into DR's rental unit significantly interfered with and unreasonably disturbed DR. Furthermore, the unauthorized entry into DR's rental unit jeopardized the health and lawful right and interest of DR. The impacts of the Tenant's unreasonable interference, disturbance and health on DR were corroborated by the Physician's Letter which states DR has experienced anxiety and had symptoms suggestive of posttraumatic stress disorder which can put DR's physical health in jeopardy.

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

The conditions that must be met in order for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

**Application for order ending tenancy early**

- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
  - (a) the tenant or a person permitted in the manufactured home park 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.

*Residential Tenancy Branch Policy Guideline* ("RTBPG") *Number 51* [Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord's application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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).

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).

Given that much of the testimony and evidence was provided by three interested witnesses, namely the Landlord, DR and IS, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chomy* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

While considering the testimony and statutory declaration submitted by the Landlord, DR and IS, I have applied the guidance set out in *Faryna v. Chomy*. In this case, the evidence of the Landlord and DR were consistent in respect of the Object and entry by the Tenant into DR's rental unit without the permission of DR. I find that the Tenant's denial of the origins of the Object and entry into DR's rental unit is inconsistent with the evidence of DR and the Landlord. The Tenant did not testify to or provide any evidence that any other person, other than for the Tenant, DR and the Landlord, had access to the Suite at the time of surrounding the incidents involving the Object. I find that a practical and informed person would readily recognize that the Tenant's denial of these events was not reasonable and is not supported by any evidence. I therefore accept the version of facts provided by the Landlord and DR over that of the Tenant.

Based on the testimony and statutory declaration DR, together with the Physician's Letter, I find, on a balance of probabilities, the Tenant gave the object to DR on her birthday, DR then returned it to the Tenant who subsequently entered DR's rental unit, without DR's permission, and placed the Object in her nightstand. I find that this entry and placement of the Object in DR's nightstand caused unreasonable disturbance to DR, violated her right to exclusive possession of her rental unit and seriously jeopardized the health, and safety and lawful right and interest of DR.

IS testified that he was assaulted by the Tenant when IS cut the power cable that was connected to a neighbour's home. The Tenant testified that he did not assault IS but chased him after he discovered IS had destroyed his property. DR testified that she witnessed the Tenant assault IS. The Landlord testified that no charges had been laid in respect of the incident. I note that, by IS' own admission, IS cut the power cable that led to an altercation between IS and the Tenant. As I have found cause to end the tenancy for other reasons under section 56 of the Act, it is unnecessary for me to make a finding whether the Tenant committed an "unlawful act" under section 56 in respect of this incident.

Based on above, I find the Tenant has:

1. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential premises; and
2. seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

The Tenant continues to reside in the Bus located on the Premises. For so long as the Tenant remains on the Premises, it is reasonable to expect that DR will experience continuing anxiety as well as place her physical health in jeopardy as corroborated by the Physician's Letter. Accordingly, I am satisfied that it would be unreasonable or unfair to another occupant of the residential premises to wait for the Landlord to serve a One Month Notice to End Tenancy to take effect pursuant to section 40 of the Act.

Based on the foregoing, I find that the Landlord has satisfied her burden of proof and is entitled to an Order of Possession pursuant to section 56 of the Act. I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenant.

Pursuant to section 65(1)(e) of the Act, I order the Landlord to return any of the Tenant's personal property to him that remain in the rental unit.

As the Landlord has been successful in its application, she may recover her \$100.00 filing fee from the Tenant pursuant to section 72(1) of the Act.

### Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order 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.

Pursuant to section 72(1) of the Act, I order that the Tenant pay the Landlord \$100.00 to reimbursement her for her filing fee of this application. This Order may be filed and enforced in the Provincial Court of British Columbia.

I order the Landlord to return any of the Tenant's personal property to him that remain in the rental unit.

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: January 24, 2022

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Residential Tenancy Branch