



# Dispute Resolution Services

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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 of the Act; and
- authorization to recover the Landlord's filing fee for its application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:58 am to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The Landlord's agent ("HC") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that HC and I were the only ones who had called into this teleconference. Two witnesses ("LC" and "MA") for the Landlord attended the hearing when required to give affirmed testimony.

HC testified the Landlord served the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NDRP Package") on the Tenant's door on January 12, 2022. HC submitted a Proof of Service on RTB Form-9 to certify the NDRP Package was served on the Tenant's door on January 12, 2022. Standing Order of the Director (the "Director's Order") of the Residential Tenancy Branch dated March 1, 2021 states in part:

**THE DIRECTOR ORDERS that:**

Pursuant to sections 71(2)(a) and (c) of the RTA and sections 64(2)(a) and (c) of the MHPTA, and subject to any further order made pursuant to those sections:

[....]

2. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between 12 and 16 days after the date the application is made must serve their materials

- a. by any method set out in paragraph 1 of this order,
- b. by attaching a copy to a door or other conspicuous place at the address at which the person resides,
- c. 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
- d. by emailing a copy to an email address provided as an address for service by the person.

[...]

I find the NDRP Package was deemed to have been served on the Tenant pursuant to sections 88 and 89 of the Act. I also find that the NDRP Package was served on the Tenant's door on January 12, 2022, being 18 days before this hearing which is more than the minimum of 12 days within the time limit required by the Director's Order.

HC testified that he was not served with any evidence from the Tenant.

Preliminary Matter – Incorrect Respondent Named as Landlord

I noted that the name of the Landlord stated in the application ("BM") did not appear to be a legal name. I asked HC if Landlord was someone who was "doing business as" BM. HC stated the owner of the rental unit was a corporation ("GMR") which did business in the name of BM. HC asked if I would amend the application to remove BM as a respondent and add GMR as a respondent to the application.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

**4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

HC's request to remove BM as a respondent and add GMR as a respondent could reasonably be anticipated by the Tenant, I amended the Tenant's application to make these corrections to remove BM as a respondent and to name GMR as the respondent.

### Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- Authorization to recover the Landlord's 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.

HC testified the tenancy commenced on April 1, 2020, on a month-to-month basis, with rent of \$1,000.00 payable on the 1<sup>st</sup> of each month. The Landlord stated the rent increased to \$1,300.00 per month when the Tenant added an additional occupant to the tenancy. The Landlord stated the Tenant was not required to pay a security deposit or pet damage deposit. The Landlord stated the Tenant paid the rent for January 2022.

HC testified he and his wife lived in a suite located on the residential premises. HC stated he believed the Tenant was engaged in selling illicit drugs from the rental unit. He stated that the Tenant had numerous guests every day who would come and go for short periods of time. HC admitted that he had not seen an actual purchase and sale transaction of illicit drugs between the Tenant and any of the Tenant's guests. HC stated the noise from the guests was constantly disturbing him, his wife and the other occupants of the residential premises. HC submitted two witness statements from LC

and MC and two witness statements from two other residents ("JC" and "DC") of the residential premises into evidence to corroborate his testimony.

JC stated in their witness statement that people were coming and going to the Tenant's rental unit all day and night long. JC stated the Tenant's guest knock on their window because they think it is the window for the Tenant's rental unit. JC stated that, although the Landlord covered the window with plywood, the Tenant's guest keep break it.

LC testified that the Tenant's guests must pass by her rental unit to access the Tenant's rental unit which is in an alleyway. LC stated that about 5 to 10 guests of the Tenant come and go to the Tenant's rental unit after dark and throughout the night. LC stated that the Tenant's guests make a lot of noise. LC stated that she has complained to HC on a number of occasions about the knocking on her window and door and the noise from the Tenant's guests. LC stated some of the guests will knock on the door for her rental unit thinking it is the Tenants and then they will go to the Tenant's door and enter the Tenant's rental unit and stay for a short period of time. LC admitted that she has never seen an actual buy and sell transaction of illicit drugs by the Tenant and one of his guests.

MA testified that there are up to 5 people during the day, and between 5 and 10 people at night, who go to the Tenant's rental unit for short periods of time. MA stated that some of the Tenant's guests will knock on the door to her rental unit as they think it is the door for the Tenant's rental unit. She stated that she is being constantly disturbed by the constant noise caused by the Tenant's guests and the knocking on her door by some of those guests.

### 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.

The conditions that must be met 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).

The undisputed testimony of HC, LC and MA is the Tenant has as many as 5 guests during the day and 5 to 10 guests who come at all hours of the night and go to the Tenant's rental unit for short periods of time. LC and MA provided undisputed testimony that they are unreasonably disturbed at all hours of the day and night by the Tenant's guests knowing on their windows or the doors to the rental units. HC provided undisputed testimony that he and his wife are being significantly disturbed at all hours of the day by the coming and going and noise caused by the Tenant's guests. HC provided two witness statements from two other occupants of the residential premises, confirming they are being unreasonably disturbed by the Tenant's guests at all hours of the day.

Based on above, I find the Tenant and his guests have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential premises.

The undisputed testimony of LC is the Tenant's guests come and go between 5 and 10 times during the night. The undisputed testimony of MA is the Tenant's guests come and go up to 5 times during the day and up to 10 times during the night. For so long as the Tenant remains in the rental unit, it is reasonable to expect that the Landlord and other occupants of the residential premises will continue to be unreasonably disturbed by the Tenant and the Tenant's guests. 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 47 of the Act.

Based on the foregoing, I find that the Landlord has satisfied its burden of proof and is entitled to an Order of Possession pursuant to section 56(2)(d)(i) 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.

As I have found the tenancy has ended for cause under section 56(2)(d)(i) of the Act, it is unnecessary for me to determine if the Landlord has proven cause on the basis the Tenant or a guest of the Tenant has engaged in an illegal activity under section 47(1)(e) of the Act.

As the Landlord has been successful in its application, it may recover its \$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 reimburse the Landlord for its 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: January 31, 2022

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Residential Tenancy Branch