



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Comox Valley Transition Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

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
- Authorization to recover the filing fee for this application pursuant to section 72.

The agents DH, PH and HN 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 17 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.

Service upon Tenant

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

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution by personally serving the tenant on February 2, 2022 in compliance with section 89 of the *Act*.

The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form. The landlord’s agent who served the tenant testified at the hearing.

In consideration of the landlord's evidence, I find the landlord served the tenant on February 2, 2022, with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

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 provided substantial testimony and supporting evidence. Not all 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	Fourplex occupied by families
Type of tenancy	Monthly
Monthly rent payable on first	\$570.00
Security deposit held by landlord	\$250.00
Pet deposit	\$100.00

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

Tenant has been uttering threats of harm towards other tenants in the building and threats of damage to property. As well as harassments to all other tenants and tenant support worker.

The landlord provided affirmed testimony as follows. The police were called to the building because of activity by the tenant on 20 occasions in a 30-day period at the end of 2021. The tenant's behavior included threatening to shoot another occupant of the building, stealing items from tenants, yelling, harassing neighbours' children, banging on walls, and screaming profanity at staff. A Protection Order was issued against the tenant with respect to the threatened occupant in the building which the

tenant violated “in 20 minutes”. There is an order in effect preventing the tenant from going near the building in which the unit is located.

The landlord testified that the tenant’s behaviour has intensified over time in terms of aggression and disturbance to others. The tenant has been warned verbally, by text and by email many times. Copies of several of the written warnings were submitted as evidence. The landlord stated that the warnings had no effect on the tenant’s behaviour which has continued to worsen.

The landlord stated the tenant still lives in the unit.

The landlord requested an immediate end to the tenancy and an order of possession as well as reimbursement of the filing fee.

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 if 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 the neighbour against whom she uttered a threat resulting in a Protection Order being issued.

I find the tenant has disturbed occupants of the building by creating noise, banging on walls and threatening both staff and other occupants. I accept the evidence that the tenant's behaviour has resulted in the police attending the unit many times and leading to an order prohibiting the tenant from going to the building.

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 occupants and a risk of ongoing disturbance of a serious nature.

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 threats, court orders and police involvement, 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.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee of \$100.00 which may be deducted from the security deposit.

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: February 18, 2022

Residential Tenancy Branch