



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code      **ET**

### 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 pursuant to section 56.

The Tenants did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 2:36 pm, in order to enable the Tenants to call into this teleconference hearing. The Landlord's agent ("CH") 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 the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). Two witnesses ("LH" and "AD") for the Landlord attended the hearing when required to provide affirmed testimony. I also confirmed from the teleconference system that CH, LH, AD and I were the only ones who had called into this teleconference.

CH testified the NDRP and the Landlord's evidence ("NDRP Package") was served on each of the two Tenants by registered mail on January 26, 2022. CH submitted the receipt and the registered mail tracking stubs to corroborate her testimony on service of the NDRP Packages on the Tenants. I find each of the two Tenants were duly served with the NDRP Packages in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the NDRP Packages on January 31, 2022.

### Issue to be Decided

Is the Landlord entitled to an early termination of tenancy and Order of Possession?

### 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.

CH submitted a copy of the tenancy agreement between the Landlord and the Tenants. The tenancy commenced on May 1, 2020, for a fixed term ending May 1, 2021 and continued on a month-to-month basis with rent of \$1,100.00 payable on the 1<sup>st</sup> day of each month. The Tenants were required to pay a security deposit of \$550.00 on April 12, 2020. CH stated the Tenants paid the security deposit and the Landlord is holding the deposit in trust for the Tenants. CH stated the Tenants have not paid the rent for January and February 2022.

CH testified the Tenants' rental unit is located on the third floor of the building located on the residential property. CH stated the Tenants' rental unit is adjacent to another rental unit occupied by ("AA") and AA's young daughter. CH stated that, on two occasions, the male Tenant ("NL") went to AA's door and insisted he gain entry so that he could use AA's balcony to cross-over to the Tenants' balcony. CH stated that, although there is a permanent partition between the two balconies, NL went around the outside of the partition to access the Tenants' balcony. CH stated the first incident ("First Entry Incident") occurred sometime around the end of August or beginning of September 2021 and the second incident ("Second Entry Incident") occurred on or about November 26, 2021. CH stated that, after the Second Entry Incident, the Landlord installed a wooden barrier that extends outward from the existing permanent partition to deter NL from climbing around the permanent partition.

AD stated she is the building manager for the residential property. AD submitted a text message between her and AA which stated, in part, the following:

A few nights ago.. Friday I think.. I answered a very loud knock on my door.. I asked who it was.. he said your neighbor quite frantically.. so I opened the door he said he had to get into his apartment because his wife was overdosing.. I said to call 911 and I can't let you climb over the balcony because you could fall. He went on about his wife then pushed his way past me headed toward my balcony.. He didn't even open my blinds I thought he would break them. He got through and climbed over.. I asked if he wanted me to call 911 he said no. It all happened very fast. I didn't even notice [another tenant] had opened her door and saw the whole

thing. This is the second time he asked to climb over the balcony. The first because he didn't have his keys. He knocked on my door four times the previous time. I wish I would have never opened my door.

AD responded to the text and asked "Thank you for sending that. How awful. Did the police show up last night?" to which AA responded, "Yes I feel very violated". AD stated she talked to AA after the Second Entry Incident and AA told her that she and her young daughter, who witnessed the event, were traumatized when NC forced his way into their rental unit after she opened her door. AD stated AA told her that she and her daughter do not feel secure in the rental unit and are fearful that someone will attempt to force their way into their rental unit again. AD stated AA also told her that she will not leave her daughter alone in the building as AA does not feel she and her daughter do not feel safe in the building. AD stated AA also reported there are continuing domestic disputes between the Tenants involving yelling, fighting and throwing and movement of objects in the Tenant's rental unit.

AD testified there had been another incident in which used syringes were found in a waste basket located the common laundry room for the residential property. AD stated the exposed syringes were located with a document that had NL's name on it. AD submitted photos of the waste basket, exposed needles and a document with NL's name on it to corroborate her testimony. AD stated that, after finding the used syringes in the waste basket, she spoke to the Tenants regarding it and they admitted they left the syringes in the laundry room, apologized for leaving them there and said it wouldn't happen again.

AD stated she has received numerous verbal complaints from other tenants regarding domestic disputes between the Tenants involving yelling, fighting and sounds objects being thrown around in the Tenants' rental unit. One of the tenants, who lives below the Tenants, has complained that she is being disturbed by the yelling and movement of objects and that has been woken up during the night by these disturbances. CH and AD stated they have received three written complaints since the beginning of December 2021 regarding the domestic disputes between the Tenants in their rental unit. CH and AD submitted the Tenants unreasonably interfered with and disturbed AA, AA's daughter and other tenants of the residential property on a regular basis. CH and AD also submitted the Tenants have seriously jeopardized the health, safety other tenants of the residential property by leaving exposed syringes in a waste basket located in a common area of the residential property.

## 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.

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 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.

*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 CH and AD was:

1. NC forced his way into AA’s rental unit during the First and Second Entry Incidents to use AA’s balcony to cross over to the Tenants’ balcony. The First and Second Entry Incidents left AA and her young daughter traumatized and violated their sense of safety and security in AA’s rental unit and the residential property;

2. the Landlord has received many verbal complaints, and three written complaints, since the beginning of December 2021, from occupants of the residential property regarding the Tenants' domestic disputes. The domestic disputes have also been reported by AA. The domestic disputes between the Tenants involve shouting, fighting and movement of objects in the rental unit;
3. one or both Tenants left used syringes with the needles exposed in a waste basket located in a common laundry room which placed the health and safety of occupants of the residential property at risk.

CH and NC submitted:

1. the First and Second Entry Incidents have jeopardized the lawful right of AA and her daughter to feel safe and secure in their own rental unit and the residential property;
2. the frequent episodes of screaming, fighting and movement of objects in the rental is seriously interfering with and disturbing the quiet enjoyment of occupants of the residential premises; and
3. the incident involving the used syringes in the laundry room placed the health and safety of residents of the residential property at risk.

Based on the undisputed testimony of CH and AD, I find the Tenants have breached subsections 56(2)(a)(i) and 56(2)(a)(ii) of the Act.

The undisputed testimony of CH and AD is there is the potential for NL to attempt to enter AA's rental unit to use her balcony to gain access to the Tenants' balcony. The undisputed testimony is the domestic disputes between the Tenants involving yelling, fights and movement of objects within the rental unit has not stopped. Based on the above, there is the potential for NL to attempt to gain entry into AA's rental unit to access her balcony and that the domestic disputes between the Tenants will continue so as to interfere with or unreasonably disturb the quiet enjoyment of occupants of the residential property. I find the Landlord has provided sufficient evidence to satisfy the requirement of section 56(b) that it would be unreasonable or unfair to the Landlord and other occupants of the residential property 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 above, I order the Tenants provide the Landlord with vacant possession of the rental unit effective at 1:00 pm March 15, 2022, after service on the Tenants.

As the Landlord has been successful in its application, I order the Tenants pay the Landlord \$100.00 for the filing fee of its application. Pursuant to section 72(2)(b), the Landlord may deduct the \$100.00 from the Tenants' security deposit of \$550.00. The Landlord must handle the remaining \$450.00 of the Tenants' deposit in accordance with the requirements of the Act.

### Conclusion

The Landlord is provided with an Order of Possession effective on March 15, 2022. This Order must be served by the Landlord on the Tenants as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is authorized to deduct \$100.00 from the Tenants' security deposit to cover the filing fee of the Landlord's application.

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 16, 2022

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Residential Tenancy Branch