



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **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 Tenant did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 2:11 pm, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent ("SR") 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 Hearing. A witness ("BH") for the Landlord attended the hearing when required to provide affirmed testimony. I also confirmed from the teleconference system that SR, BH and I were the only ones who had called into this teleconference.

SR testified the Notice of Dispute Resolution Proceeding and Landlord's evidence ("NDRP Package") was served by posting it on the Tenant's door on January 15, 2022. I find that the Tenant was served with the NDRP Package in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenant was deemed to have been served with the NDRP Package on January 18, 2022.

### Preliminary Matter – Removal of Two Respondents from Landlord's Application

At the outset of the hearing, SR stated two of the named applicants ("ND" and "VD") were not tenants on the tenancy agreement. SR stated that ND and VD were staying in the rental unit with the Tenant. SR stated that, based on information she received from the Residential Tenancy Branch, the Landlord should include ND and VD as respondents in its application. SR stated that the Landlord wanted to ensure that, if an

Order of Possession was granted, ND and VD would be named in it and would be required to vacate the rental unit with the Tenant. I noted that if I granted an Order of Possession for the Tenant to vacate the rental unit, it would require any guests or other occupants to vacate the rental unit as well. SR requested that I amend the Landlord's application to remove ND and VD as respondents in the Landlord's application.

Rules 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.

The Tenant could reasonably have anticipated a request for an amendment to an application to remove persons named in the application as respondents who are not named as tenants in the tenancy agreement. Based on the above, I amended the application to remove ND and VD as respondents on the Landlord's application.

#### **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.

SR submitted a copy of the tenancy agreement dated October 2, 2020, between the Tenant, another person ("SS") and the Landlord. SR testified SS moved out of the rental unit in March 2021 and he was no longer a party to the tenancy agreement. SR stated the tenancy commenced on October 1, 2020, with rent of \$900.00 payable on the 1<sup>st</sup> day of each month. The Tenant and SS were to pay a security deposit of \$425.00 on October 2, 2020. Pursuant to a Pet Agreement, the Tenant and SS were to pay a pet damage deposit of \$425.00 on October 2, 2020. SR stated the security deposit and pet

damage deposits were paid by the Tenant and SS and the deposits were being held by the Landlord. SR stated the Tenant owes the Landlord rental arrears of \$216.66 and a late payment fee of \$25.00.

SR testified the rental unit is located on the second floor of the residential premises. SR stated there are constant fights and screaming occurring in the rental unit that appear to involve the Tenant, NK and VD or any two of them. SR stated the Landlord had received many complaints from other tenants in the residential premises.

SR stated a warning letter dated September 7, 2021 ("First Warning"), was served on the Tenant, a copy of which SR submitted to corroborate her testimony. In the First Letter, the Tenant was advised the Landlord had received complaints from other tenants in the building about someone in the rental unit who was screaming loudly during early morning hours on Saturday, September 5, 2021. The First Warning stated the screaming woke up several tenants during the night. The First Warning stated the Tenant was in breach of section 17 of the tenancy agreement relating to the conduct of tenants. The First Warning reminded the Tenant she was responsible for her actions and the actions of her guests while they are on and in the property. The First Warning requested the Tenant not to disturb, harass or create noise that would disturb the comfort of other tenants in the building.

SR stated she was at the residential premises on December 7, 2020<sup>1</sup> when she heard screaming coming from the rental unit. SR stated she went to investigate and found NK throwing items from the balcony of the rental unit to the ground floor and creating a loud disturbance. SR stated she confronted NK and an altercation started between her and NK. SR decided to leave the residential remises, got into her car and NK attempted to get through the passenger window of the SR's car. SR submitted photos, taken by BH, of the objects that were lying on the ground that were thrown from the balcony of the rental unit. SR also submitted photos she took of NK pushing her way into SR's car. SR stated she received a text dated January 16, 2022, in which NK apologized for her behavior on September 5, 2021.

SR stated that, after the incident on December 7, a second warning letter dated December 9, 2021 ("Second Warning"), was served on the Tenant advising complaints were received from other tenants in the building regarding a dispute or altercation that occurred in the Tenants unit between NK and VD on December 7, 2021. The Second Warning stated complaints had been received from other tenants in the residential premises regarding the screaming and items thrown out of the unit onto the front lawn on December 7, 2021. The Second Warning stated the police had been called to the

rental unit on two occasions because of disturbances caused by the Tenant and the Tenant's two guests. The Second Warning stated that, further disturbances, fights, RCMP involvement, trash and debris outside of the Tenant's rental unit, would put the Tenant's tenancy in jeopardy. SR stated that, notwithstanding the Second Warning, the fights and screaming in the rental unit have not stopped.

BH testified she lives in the rental unit above the Tenant's rental unit. BH stated one of the occupants of the Tenant's rental unit, ND, is always screaming and fighting with the male occupant, VD. BH testified the altercations have been so loud on several occasions that she has called the RCMP as she was concerned for the safety of the occupants of the rental unit. BH testified that December 7, 2021, she witnessed NK throwing items and furniture, from the balcony of the Tenant's rental unit to the ground below. BH stated that, if there had been anyone below the balcony, they would have been at risk of injury as some of the items appeared to be quite heavy. BH stated that the screaming and fights are a regular occurrence which seriously disturbs her quiet enjoyment. BH stated she expects the disturbances will continue until the Tenant, NK and VD vacate the rental unit.

### 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 SR was:

1. the Tenant has permitted NK and VT on the residential property and they are occupying the rental unit;
2. there is constant screaming and fighting occurring in the Tenant's rental unit;
3. the RCMP have attended at the Tenant's rental unit on two occasions;
4. there have been regular complaints from other tenants on the residential property regarding the screaming and yelling in the Tenant's rental unit;
5. on one occasion, she witnesses NK throwing items from the balcony of the rental unit to the ground below; and
6. the Landlord has served the Tenant with the First Warning and Second Warning advising the Tenant she is in violation with the terms of the tenancy agreement regarding her conduct in the residential premises

The undisputed testimony of BH was:

1. she lives in the rental unit above the Tenant's rental unit;
2. there screaming and fighting between a man and a woman in the Tenant's rental unit on a regular basis;
3. on two occasions, the fights and screaming in the rental unit have been so loud that BH has called the RCMP as she was fearful for the safety of the occupants in the rental unit;
4. on one occasion, she witnessed NK throwing items, including furniture, from the balcony of the Tenant's rental unit to the ground below, potentially placing anyone below at risk of injury;
5. the screaming and fighting in the rental unit occur frequently and they seriously interfere with and disturb her quiet enjoyment of her rental unit and makes her fearful that someone may be injured; and

6. she expects the fighting and screaming to continue on a regular basis until the Tenant, NK and VD vacate the rental unit.

SR submitted that the frequent episodes of screaming and fighting in the rental is seriously interfering with and disturbing other occupants in the residential premises. SR submitted that the items thrown from the balcony of the rental unit to the ground below by NK on December 7, 2021, seriously jeopardized the safety of other occupants of the building.

Based on the undisputed testimony of SR and BH, I find that NK and VT are persons the Tenant has permitted on the residential property and in the rental unit. I find that the Tenant has breached subsections 56(2)(a)(i) and 56(2)(a)(i) of the Act because the Tenant, or a person permitted on the residential property by the Tenant, has:

1. significantly interfered with or unreasonably disturbed other occupants of the residential property; and
2. have seriously jeopardized the health or safety or a lawful right or interest of other occupants of the residential property.

Although SR received a text from ND on January 16, 2022, apologizing for her behavior on December 7, 2021, that text was sent to SR by ND the day after the Tenant was served with the NDRP Package for the Landlord's application. The undisputed testimony of BH is the fighting and screaming is continuing and that, for so long as the Tenant, ND and VD remain in the rental unit, BH expects that she will continue to be disturbed by the Tenant, ND and VD. Based on the above, it is reasonable to expect that the Landlord and other occupants of the residential premises will continue to be unreasonably disturbed by the Tenant, ND and VD. 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 find that the Landlord has satisfied its 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.

Conclusion

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

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 3, 2022

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Residential Tenancy Branch