



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** ET, FFL

### **Introduction**

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an early end to the tenancy and an order of possession pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:05 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The landlord confirmed that she was not recording the hearing.

### **Service upon Tenant**

Since the tenant did not attend the hearing, the issue of service was addressed. Rule 10 of the Rules of Procedure (the "**Rules**") applies to expedited hearing - hearings heard on short notice to the respondent. Expedited hearings are for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Rule 10 of the Rules sets out the instructions for service in applications made pursuant to s. 56 of the *Act*, "Expedited Hearings". Within one day of the Notice of Dispute Resolution Proceeding Package being made available by the RTB, the landlord must serve each tenant with stated documents including the Notice of Dispute Resolution Proceeding and the evidence.

I note the landlord after receiving the Dispute Notice on January 25, 2022, submitted an amendment to the RTB removing MM as a respondent stating that MM had moved out of the rental unit, December 31, 2021, and provided confirmation. The sole tenant remaining in the rental unit is MT.

Rule 10.3 states:

#### **10.3 Serving the notice of dispute resolution proceeding package**

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- the Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

The Director's Order of June 26, 2019, provides timelines for service. Since service and response time limits are shorter than usual, the permitted methods of service are restricted. If the hearing date is between six (6) and eleven (11) days after the date the application is made, the applicant must serve the package:

- by leaving a copy with the person
- if the person is a landlord, by leaving a copy with an agent of the landlord, or
- if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

If the hearing date is between 12 and 16 days after the date the application is made, the permitted service methods are:

- by attaching a copy to a door or other conspicuous place at the address at which the person resides
- 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
- by emailing a copy to an email address provided as an address for service by the person.

If the hearing date is between seventeen (17) days or more after the date the application is made, the permitted service methods are any of the methods set out above, or by sending a copy by registered mail to the tenant's residential address.

The landlord submitted the application on January 20, 2022. The RTB scheduled the hearing for February 17, 2022, twenty-seven (27) days later.

The landlord testified she served the tenant in person with the Notice of Hearing and Application for Dispute Resolution on January 25, 2022, at 6:28 p.m., twenty-two (22) days before the hearing in compliance with the third (3<sup>rd</sup>) method.

The landlord provided a witnessed Proof of Service of Expedited Hearing (RTB-9) form.

In consideration of the landlord's evidence, I find the landlord served the tenant on January 25, 2022, with the Notice of Hearing and Application for Dispute Resolution in compliance with the *Act*.

### **Tenant's Evidence**

The tenant did not attend the hearing and did not submit any evidence in response to the Notice of Dispute filed by the landlord.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) the relief requested.
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony as the tenant did not attend the hearing. The landlord submitted texts from the upstairs' tenants about multiple incidents, some involving a police presence, concerning the downstairs' tenants; multiple text messages from MT's common-law spouse, MM, up to and including the day she apparently left the premises permanently; and text messages from the tenant, MT, himself. No witnesses were called. The landlord spoke to the police who advised her that MT was "known to them". They were unable to provide any file documentation because of privacy issues. The landlord provided substantial testimony.

The landlord submitted a copy of the tenancy agreement. The parties entered into a written month- to- month tenancy agreement starting December 10, 2021. Monthly rent is \$2000.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$1000.00. The landlord still retains this deposit.

The landlord's submission, in the application, states:

On Dec. 11, the next day they moved in, MM called the police because MT drank and abused her. On Dec. 15, my upstairs tenant texted me: "MT was having MM and her child removed so the police were here. She was yelling about how he smokes crack and is a druggie." From upstairs tenant: "The police were here last night again. This was the fourth time, lots of screaming and fighting and things being thrown around. It scares our daughter, K so much she cries and can't sleep..."

The landlord testified to the truthfulness of the written submission and provided text messages from the upstairs tenant as evidence. The upstairs tenants' child is fearful, anxious, and afraid to go to sleep on her own. The tenants told the landlord that if the downstairs tenant does not leave, they will give notice because they no longer feel safe, and it is not the environment they

want to raise their daughter in. The upstairs tenant stated the fights involve screaming, yelling, things being thrown and often go on until 7 a.m. This is disruptive and frightening for their family. The upstairs tenants stated there is "lots of drug use etc." and asked that the landlord not share the information with the downstairs tenant out of fear for the safety of the family. "I would appreciate it if you did not repeat what I gave told you as it would create a possible dangerous situation." [reproduced as written]

The upstairs tenant kept in regular contact with the landlord concerned about the number of times the police attended the premises, the situation with MM and her child, and the ongoing yelling, screaming, and fighting. The upstairs tenant, on December 15 described the "scene at the house on Sunday" that resulted in the police attending and trying to keep the situation controlled while MM and her son took their belongings from the suite.

MM texted the landlord, almost on a daily basis, with accusations of physical and sexual assault, imploring the landlord to evict him. MM accused MT of physically abusing her son. MM's son was so terrified he hid in the closet. MM warned the landlord that MT had a gun and other weapons on the premises. MM stated that MT stole some of the landlord's stored artwork and garden tools and sold them on Craigslist, providing the landlord with the listings. MM vacated the unit as of December 31, 2022.

In a December 28, text to the landlord MT he was the one who "called the police 3 out of the 5 times" because of MM's drinking problems and takes exception to the One Month Notice stating he, not MM, is the victim writing "all I did was love her and want her to be happy".

In the span of three (3) weeks, December 10-27, the police attended the basement suite five (5) times. In that same time span, MM vacated the premises and moved back five (5) times. On December 27, 2021, the landlord issued the tenants a One Month Notice to End Tenancy for Cause. The effective date of the notice is dated January 27, 2022. The grounds to end tenancy are as follows:

- Tenant or a person permitted on the property by the tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activities that has or is likely to damage the landlord's property
- Tenant or a person permitted on the property by the tenant has engaged in illegal activities that has or is likely to adversely affect the quiet enjoyment security, safety or physical well-being of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

After receiving the One Month Notice for Cause, MT texted the landlord stating that if she paid him \$5000.00, he would vacate. He alleged that he had made significant improvements to the suite, and he stopped paying rent.

On January 20, 2022, the landlord applied for an Expedited Hearing hoping that the expedited process would help her end the tenancy before the One Month Notice effective date.

The cited text messages are only a few in the series of text messages the landlord was receiving from all tenants. The landlord states MT still lives in the unit and has not paid rent for January or February. His behavior continues to be disruptive, and she believes he continues to use drugs. She is very concerned that he may have firearms and other weapons on the premises as disclosed by MM.

The landlord requests an immediate end to the tenancy and an order of possession.

### **Analysis**

Based on the above affirmed and undisputed testimony of the landlord, the evidence provided, and on a balance of probabilities, I find the following:

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

**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.

*Policy Guideline #51- Expedited Hearings* provides guidance for these types of applications. 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 reads in part:

Ordinarily, the soonest an application for dispute resolution can be scheduled for 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 s. 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 or 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 or 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]

The landlord relied on sections (a) (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 affirmed, uncontested testimony of the landlord, and reviewing the evidence, I find the landlord has proven on a balance of probabilities that the tenant “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant”, the ground identified in the application for ending tenancy early under s. 56 of the *Act*.

I find the behavior of the downstairs tenant has unreasonably disturbed the other occupants of the rental unit. Fights, so loud and violent, that the child upstairs awoke, understandably upset and afraid – crying - traumatized and unable to sleep. I accept the evidence that the downstairs tenants’ behavior resulted in the police attending the unit many times thereby disturbing and disrupting the upstairs tenants. I accept as fact, the tenants upstairs worried about possible retaliation from the downstairs tenant, sent a text to the landlord saying, “I would appreciate it if you did not repeat what I gave told you as it would create a possible dangerous situation.”

The tenants living upstairs have a lawful right to “quiet enjoyment” and since the basement tenancy began the upstairs tenants were subject to five (5) police interventions in a span of less than three (3) weeks, witnessed a mother and child being “kicked out” of the suite by MT on several occasions, and hearing what sounded like domestic violence.

I have also considered that the fighting and yelling and screaming and police visits may have stopped now that MM moved out; however, MM moved out and moved back in with MT five (5) times in the span of three (3) weeks; therefore, there is no guarantee that the couple will not reconcile. Further, the landlord testified to the ongoing aggressive, intimidating behavior of the tenant toward the landlord including a text message demanding \$5000.00 if the landlord wanted him to move.

The landlord provided credible testimony and sufficient supporting evidence establishing that the events happened in the manner to which was testified. I find the landlord’s account of what transpired to be reliable and believable. I find the landlord has shown that there is a reasonable risk to the health, safety, and well-being of the upstairs tenants and a risk of ongoing disturbance to these tenants; thereby meeting the first part of the two-part test under s. 56 (a)(ii).

The landlord has met the burden of proof with respect to the second part of the test viz., it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a dispute resolution to the notice to end the tenancy under s. 47 [landlord’s notice: cause] to take effect. Given the established pattern of behavior with the on again off again relationship between MM and MT in the first three (3) weeks of tenancy, the police interventions, and impact this behavior has had on upstairs tenant’s child and on the upstairs adult tenants’ feelings of safety and well-being leads me to conclude it would be unreasonable and unfair to the landlord and the other occupants to continue this tenancy.

I note the landlord issued a One Month Notice, with an effective date of January 31, 2022. As of the effective date, the downstairs tenant has not vacated the property. Since the effective date in the One Month Notice is passed, the landlord can file an application for dispute resolution based on an overholding tenant. Notwithstanding that I found the landlord met the burden of proof required to end tenancy early, I find a reasonable interpretation of s. 56(b) of the *Act*, extends to the lengthy wait times associated with filing for dispute resolution based on the One Month Notice. Again, to reiterate, to make the landlord and other occupants of the rental unit wait until the matter of tenancy is resolved under section 47 of the *Act* is unreasonable and unfair.

Pursuant to section 72(1) of the *Act*, as the landlord has been successful in the application, she may recover her filing fee from the tenant's security deposit.

Pursuant to section 55 of the *Act*, the landlord is entitled to an Order of Possession.

### **Conclusion**

Pursuant to section 55 of the *Act*, I order that the tenant deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this

decision.

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 28, 2022

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Residential Tenancy Branch