



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Pacifica Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution (application) made on March 5, 2022, seeking remedy under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause]; and
- recovery of the filing fee.

The landlord's agents (agents), their witnesses, the tenant, and the tenant's witness attended the hearing, and the hearing process was explained. The tenant confirmed receipt of the landlord's application and evidence.

The landlord confirmed serving the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by email to an email address provided for service of documents on March 16, 2022.

The tenant submitted documentary and photographic evidence to the landlord, totalling 122 pages. The agent said they only received approximately 90 pages.

All parties affirmed they were not recording the hearing.

The parties were provided the opportunity to present their affirmed testimony, to refer to their documentary evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules. However, not all details of the submissions and or arguments are

reproduced here; further, only the evidence specifically referenced and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a One Month Notice to End Tenancy?

Is the landlord entitled to an Order of Possession of the rental unit and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around the matters are set out below.

The tenancy started on June 1, 2021. The rental unit is in a multiple unit apartment building.

In support of their application, the agent submitted that the tenant has done at least one of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk.

In their written evidence in support of the application, the landlord wrote:

*("Tenant name")..poses a threat to the health and safety of other tenants and families residing at (\*residential property address\*) due to escalating behaviours. She has received 3 warning letters for noise/conduct due to multiple complaints*

*during her tenancy. We issued a one month Notice to End Tenancy on February 18, 2022, and since that notice was received the behaviours have escalated to causing damage to the property by spreading feces and urine throughout the building, marking on walls with a black marker and gouging the drywall with a screwdriver”.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord produced the three warning letters.

In conclusion, the landlord wrote the following:

*“It is the position of (\*landlord name\*) that the Respondent has been given fair warning that she is in breach of her tenancy agreement and time to correct the actions. The Respondent has failed to stop behaviours causing an unreasonable disturbance, and has escalated to vandalizing the property by spreading urine and feces, graffiti with a black marker, and gouging walls with a screwdriver. As such, the Applicant believes they have acted fairly and are obligated to end the Tenancy of this Respondent in order to ensure that the remaining residents have peaceful enjoyment restored and feel it is once again a safe building to live in”.*

In providing oral evidence, agent SB said she was on the residential property on March 10, 2022, at which time she witnessed the tenant being arrested on mischief charges for spitting. SB said the RCMP called her on March 28, 2022, and she was told that over the last two weeks, the RCMP has now accumulated a large and growing file on the tenant.

SB said that they filed this application due to the tenant’s escalating behaviour since the 1 month Notice was issued.

Evidence filed by the landlord included 3 warning letters issued to the tenant and three complaint letters written by other tenants against this tenant.

Witness SG –

SG, who is a resident in the residential property, testified that they saw the tenant coming out of her unit carrying a cup, and directly after that, there was urine all over the place. SG testified that they heard the tenant cursing and witnessed her damaging the

building. SG said they avoid her as she is violent and has caused a health and safety concern for themselves and their children. SG said that the tenant has left feces in the stairwell, which the caretaker of the building witnessed the tenant leaving, and has spit on and gouged the walls.

SG said they avoid the tenant due to the derogatory names the tenant calls them.

SG said that in one encounter with the tenant, they were outside the building, walking her infant in a stroller with their dog. The tenant was outside, at which time she got in her car, started screaming and did a “donut” right in front of their child and dog, causing SG to fear for their safety. SG said that the tenant is a health and safety concern on so many levels and is a huge problem for the residents.

Witness AC –

AC testified that they have had multiple issues with the tenant, who verbally abused AC's child to the point the police got involved. AC said that the tenant is now under a no-contact order regarding AC's family.

AC testified that the tenant has sworn so many times at her son, that he does not feel safe in his own home. AC testified that she witnessed the tenant spit at her daughter and that the tenant has violated the no-contact order.

AC said their son has been told many times not to engage with the tenant. AC said that they have contacted victim services to help with their son as he is afraid to go outside due to the behaviour of the tenant.

Witness GE –

GE testified that on March 10, 2022, at 9:22 am, they were resting in their unit, which is on the same floor as the tenant, and heard spit running down their door. GE testified that they got up quickly and observed the tenant going to the fire escape, and that from hearing the spit to opening their door took about two seconds. GE said there was no one else before or after the tenant, indicating the tenant was the only around at the time of the incident. GE said that the tenant was wearing a gold jacket.

GE testified they then called the RCMP, who attended and intended on arresting the tenant. GE supplied the police file number.

GE testified that they have witnessed many acts of vandalism by the tenant around the property, including distributing feces in the fire escape, graffiti, sprinkling talcum powder and eggs on their common floor. GE said that the tenant is well known for vandalism around the property.

Witness LC –

LC testified that she witnessed the tenant go into the elevator and when they went in after to take their dog out, saw that the elevator had been left with graffiti. LC testified that the tenant has defecated in the stairwell.

LC said they filed a complaint form with the landlord, which was included with the landlord's evidence.

Tenant's response –

The tenant testified that she did not know where to start with her testimony as she disagreed with everything said.

The tenant testified that the vandalism and harassment has been directed at her, not the other way around. The tenant said she has pictures and said that the landlord did not provide any pictures. The tenant said that she has called the police and been given file numbers.

The tenant testified that the warning letters were false and exaggerated and that the landlord has never communicated with her about any of the issues. The tenant said that the 3<sup>rd</sup> warning letter did not instruct her that it would lead to her eviction. The tenant said that the warning letters were just opinions and were personal.

The tenant submitted a transcript of a meeting in the lobby to which she was not invited. The tenant said that the transcript shows the landlord is trying to get rid of her, that other tenants were being egged on, and that her reputation is being ruined. The tenant submitted she was not given a chance to defend herself.

The tenant said that it is the other tenants who are leaving graffiti all over the building and on her car, referring to the photographs filed in her evidence.

The tenant testified that she does not know the landlord's witnesses, they are not being truthful, as she is a quiet and private person and stays outside.

The tenant denied the donut incident, and it was that witness that initiated a conversation with her. The tenant said that perhaps that witness took offense as she does not want to be friends with anyone in the building as she is a private person, so she did not respond to the witness' conversation.

The tenant testified that she is a respectful person and pointed out there are a lot of dogs in the building pooping and peeing. The tenant submitted that the cause of the urine in the building are the dogs and another tenant who has a bladder issue, with no control. The tenant submitted that there is no footage of her vandalizing or doing any of the things being said, and therefore, there is no proof.

The tenant testified that she was not arrested when the police attended, but did confirm that a condition was a no-contact order with the witness and their family.

The tenant denied treating a child in the manner claimed, as she has a child of her own.

Tenant's witness –

The witness testified that the walls were slashed when they moved in last April. The witness testified that they just recently saw the word, "Nazi", in the washroom, and that the peeing in the elevator is an ongoing problem.

The witness testified that they have seen the tenant in a ground level floor peeing and that the pooping in the building started when a new tenant moved in, as that is where the witness has seen the poop.

Evidence filed by the tenant included multiple written complaints to the landlord, beginning in the summer of 2021, regarding excessive noises disturbing the tenant's quiet enjoyment of the rental unit, undated photographs in and around the residential property, and a transcript of the meeting the tenant submitted was held without her.

The tenant stated she just found the transcript.

Landlord's rebuttal –

SB confirmed that they did not receive all the tenant's evidence and they would never consider an unauthorized transcript of a meeting.

SB submitted that they have security constantly on the premises, who are in the laundry area constantly, and take pictures when there is anything of note.

Tenant's surrebuttal –

The tenant said that she did provide the landlord with a complete copy of the evidence.

### Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities, which means that it is more likely than not the facts occurred as claimed.

Section 56 of the Act applies and 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.

(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]

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

At most, one version of events can be true. In weighing the evidence, I must determine the credibility of the witnesses. The often cited test of credibility is set out in *Faryna v Chorny*, [1952] 2 DLR 354 (BCCA) at 357:

The real test of the truth of the story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the landlord submitted sufficient evidence that the actions of the tenant has caused the RCMP to be called to the residential property multiple times and one of the visits on March 10, 2022, was witnessed by the landlord's agent. This visit, according to the landlord's agent, was that the tenant was arrested on mischief charges. As a result

of a police visit, the tenant was issued a no-contact order regarding a family with children living on the same floor. The tenant confirmed that she is under the no-contact order. It does not make sense that the tenant would be issued a no-contact order unless there was a reason to do so.

The tenant/witness from that family described that the tenant has sworn and screamed at their child, verbally abusing them, and the child does not feel safe in their home. Victim services has been contacted to assist with the child. I find the tenant/witness testimony consistent and compelling regarding the verbal abuse their child has endured by the tenant's behaviour. A child should feel safe where they live.

I find a reasonable person would be unreasonably disturbed about police being called to the residential property, which resulted in a no-contact order issued to the tenant in order to protect their family. I find the police being called would have a serious and negative impact on the residents and children living in the complex and that they should not be exposed to such police activity. I therefore find it reasonable to conclude that these actions of the tenant resulting in a no-contact order significantly interfered with or unreasonably disturbed another occupant of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I also find another tenant/witness provided detailed and compelling testimony that the tenant acted aggressively and inappropriately when maneuvering her car around in circles directly in front of and in close proximity while that tenant was walking their infant and dog. The tenant submitted that this was perhaps due to that tenant being offended by the tenant not engaging in conversation. I find this version of events by the tenant does not make sense under the circumstances. Of note, in testimony, the tenant did not specifically deny that she made a donut with her car directly in front of the other tenant.

I find the actions of the tenant endangered the safety of the other tenant's infant child, dog and the tenant. I find it reasonable to conclude that actions of the tenant significantly interfered with or unreasonably disturbed another occupant of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

While I have considered the testimony and evidence of the other two witnesses and find the allegations raised were concerning, the consistent evidence is that the tenant's

behaviour has caused the RCMP to be called multiple times, to the point the tenant is under a no-contact order regarding other tenants who live on the same floor.

Due to the above, I therefore find that the landlord has proven that the tenant both significantly interfered with or unreasonably disturbed another occupant of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I am also satisfied that it would be unreasonable and unfair to the landlord and other residents to wait for the One Month Notice to End Tenancy to take effect.

I therefore grant the landlord's application to end this tenancy early.

I order this tenancy ended this date, April 14, 2022 and therefore grant the landlord an order of possession of the rental unit effective two (2) days after service on the tenant.

The tenant is cautioned that should she fail to vacate the rental unit as ordered, she may be responsible for the costs of enforcement, **which include bailiff fees.**

I also grant the landlord a monetary order in the amount of \$100, due to their successful application.

### Conclusion

The landlord's application is successful. The landlord is granted an order of possession effective two (2) days after service on the tenant.

I also grant the landlord a monetary order in the amount of \$100, due to their successful 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 14, 2022