



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brightside Community Homes  
Foundation and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for an order for early termination of a tenancy, pursuant to section 56.

I left the teleconference connection open until 9:45 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by tenancy specialist SB (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 of the hearing the attending party affirmed she understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord stated that field staff SD attached the notice of hearing and the evidence (the materials) to the tenant's rental unit door on May 04, 2022 at 1:28 P.M. The landlord submitted a photograph showing the package attached to the rental unit's door and a proof of service (RTB form 9). Based on the landlord's convincing testimony, the photograph and the proof of service, I find the landlord served the materials in accordance with section 89(2)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by attaching to the door, on the 3<sup>rd</sup>

day after it is attached. The tenant is deemed to have received the materials on May 07, 2022, in accordance with section 90 (c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issue to be Decided

Is the landlord entitled to an order for early termination of the tenancy?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord testified the tenancy started on June 15, 2021. Monthly rent is \$320.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$160.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord submitted this application on April 25, 2022. The landlord claims the tenancy should end early because the tenant is significantly interfering, unreasonably disturbing and seriously jeopardizing the safety of other occupants.

The landlord submitted a video showing the tenant deliberately kicking and damaging the wall of the rental building's hallway on April 01, 2022.

The landlord served the April 06, 2022 warning letter to the tenant:

On April 1, 2022 at approximately 9:30 pm you are recorded on our video system willfully damaging the landlord's property. [...]

Furthermore, due to your outbursts in the residential building, the police were called and attended to diffuse the incident. I have included the [redacted] Police Department's incident number for your reference [redacted]. It is important that you realize this behaviour will not be tolerated, and if it continues you will be issued a Notice to End your tenancy, under the RTA. You will be expected to pay for the repairs to the wall you damaged, in full, and invoice will be forwarded to you.

The landlord submitted a complaint from occupant LR on April 15, 2022:

April 12<sup>th</sup> I was in the courtyard with a neighbour having a visit. [the tenant] came out onto his balcony and started yelling at us to either shut up or “F” off and get out. April 15<sup>th</sup> early a.m. he came out on his balcony and proceeded to wake up neighbours by screaming at the top of his lung and then slammed his balcony door very forcefully. He’s becoming [redacted] and his aggressive behaviour is making us uncomfortable.

The landlord said that on April 18, 2022 the tenant threatened to assault another occupant and the police attended. The landlord provided a police file number (recorded on the cover page of this decision). The landlord submitted a complaint from occupant LI on April 18, 2022:

The police have been to his home twice and advised us (tenants) that housing needs to deal with the issue. [The tenant] continues to jump up and down on the floor causing vibration throughout the building. He is also yelling from the balcony.

The landlord served the April 20, 2022 warning letter to the tenant:

On April 18, 2022, we received several letters of complaints from your neighbors Informing us that your behaviour over the previous long weekend, was impacting the quiet enjoyment of their homes, as a landlord we take these complaints very seriously. In fact, you received a letter outlining the same concerns from our office on April 06, 2022.

[...]

Our aim is to work with our tenants, to enjoy their homes. That is the right of every tenant, including you. However, if you continue to disregard the impact your conduct has on other tenants, we will have no choice but to file a dispute motion with the Residential Tenancy Branch to end your tenancy for the reasons laid out in this correspondence.

The landlord affirmed the tenant has mental health issues and is not cooperating with his mental health support team.

The landlord submitted an email from the landlord’s staff on April 20, 2022:

The team recently connected with [the tenant] and were very clear that his housing could be at risk, based on the call to [the police] and information they have received. She said they will connect with him again and firmly let him know that his escalating behaviour is escalating his potential eviction.

The landlord stated the occupants of the rental building are over the age of 55, some of them do not speak English, and they are very afraid of the tenant because of his aggressive behaviour.

The landlord testified that on May 18, 2022 the tenant was arrested at his unit because he kicked the door of another occupant and was released on the date of the hearing. The landlord provided a police file number (recorded on the cover page of this decision).

### Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

- (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.

Residential Tenancy Branch Policy Guideline 51 states:

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.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the undisputed convincing testimony offered by the landlord, the April 01, 2022 video, the April 06 and 20 warning letters, the April 15 and 18 complaints and the April 20, 2022 email, I find, on a balance of probabilities, pursuant to section 56(2)(a)(ii) of the Act, that the tenant has seriously jeopardized the safety of other occupants of the rental building by yelling and threatening other occupants on April 12, 15 and 18, 2022. I note the landlord warned the tenant in writing on April 06 and 18, 2022 and the tenant continued to be aggressive towards other occupants. On May 18, 2022, after the landlord served the materials of this application, the tenant was arrested because he kicked the door of another rental unit.

If the landlord issued a notice for cause under section 47 of the Act, the landlord could not end the tenancy earlier than one month after the date the notice is received by the tenant. I find that pursuant to section 56(2)(b), it would be unreasonable for the landlord to wait to end the tenancy by issuing a notice for cause due to the significant threat to the safety of other occupants of the rental building and the landlord caused by the tenant.

I grant an order of possession effective two days after service on the tenant, pursuant to section 56(2) of the Act.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order**. 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: May 20, 2022

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Residential Tenancy Branch