



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **ET, FFL**

This hearing originally convened on June 7, 2022 and was adjourned to June 9, 2022 due to time constraints. This Decision should be read in conjunction with the Interim Decision dated June 7, 2022. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord, the landlord's agent and tenant V.G.A. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this Decision.

### **Preliminary Issue- Service**

In the first hearing the landlord testified that the tenants were served with this application for dispute resolution and evidence via registered mail on May 18, 2022. A Canada Post registered mail receipt for same was entered into evidence. In the first

hearing tenant V.G.A. testified that she received the above package but could not recall on what date. I find that the tenants were deemed served with the above documents on May 23, 2022, five days after their mailing in accordance with sections 88, 89 and 90 of the *Act*.

Both parties agree that the evidence was provided on a usb stick and that the landlord did not provide RTB Form 43- Digital Evidence details.

Rule 3.10.4 of the Residential Tenancy Branch Rules of Procedure states

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

I find that while RTB Form 43 was not provided by the landlord, the tenant is not prejudiced by the inclusion of the landlord's evidence for consideration because the quantity of evidence is low and easy to navigate. I accept the landlord's evidence for consideration.

In the second hearing the tenant noted that the supporting evidence listed in the re-scheduled Notice of Dispute Resolution Proceeding included evidence not contained in the original Notice of Dispute Resolution Proceeding.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

The landlord testified that a few pieces of evidence were uploaded after the original application for dispute resolution was made. I find that the late evidence was not submitted with the original Application for Dispute Resolution and is therefore excluded from consideration, with the exception of the registered mail receipt pertaining to the service of the landlord's application for dispute resolution and evidence package on May 18, 2022.

Rule 10.6 of the Rules states:

If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 of the Rules states:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The landlord's application for dispute resolution was filed on May 16, 202 and Notice of Dispute Resolution Proceeding was not made available to the landlord by the Residential Tenancy branch until May 18, 2022. I find that the landlord was not able to serve the tenants with the Notice of Dispute Resolution Proceeding documents until May 18, 2022 and so the registered mail receipt was not available on May 16, 2022. I accept the registered mail receipt for consideration.

Tenant V.G.A. testified that she attempted to personally serve the landlord with evidence on June 3<sup>rd</sup> and June 4<sup>th</sup>, 2022 but the landlord refused to meet her. The landlord testified that he was out of town for the weekend and was not available to meet her. Tenant V.G.A. testified that she emailed the landlord the tenants' evidence in three emails sent on June 2<sup>nd</sup>, June 3<sup>rd</sup> and June 4<sup>th</sup>, 2022.

Tenant V.G.A. testified that the video files could not be sent over email, so she turned them into audio files which were sent in the June 3<sup>rd</sup> and June 4<sup>th</sup> emails.

The landlord confirmed receipt of the above emails on the dates they were sent. The landlord confirmed that he did not receive any video evidence, only audio evidence.

The tenant testified that the landlord was not out of town when she requested they meet for the purpose of service. The tenant entered into evidence a document titled "Email Trace" which states that the June 2, 2022 email was read in the same subject rental city that the landlord resides in, and the June 4, 2022 email was read in a neighbouring city. The landlord testified that the tracing information is incorrect.

I find that the tenants have not proved on a balance of probabilities that the tracking information is correct. I find that the tenants have not proved the reliability or accuracy of email tracking technology. I give no weight to the contents of the "Email Trace" information.

I find that the landlord was sufficiently served with the tenants' evidence for the purposes of this *Act*, in accordance with section 71 of the *Act* because the landlord confirmed receipt. The tenants' video files are excluded from consideration because they were not served on the landlord, but their audio content is accepted for consideration as this was served. I note that the landlord was not required to return from plans outside the city to accept service. I find that the above does not constitute service avoidance.

### Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below. The parties were advised that their evidence must be presented, and that evidence not presented may not be considered.

Both parties agreed to the following facts. This tenancy began on January 4, 2022 and is currently ongoing. Monthly rent in the amount of \$4,400.00 is payable on the first day of each month. A security deposit of \$2,200.00 and a pet damage deposit of \$2,200.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The following timeline of events was not disputed:

- January 24, 2022- the landlord served the tenants via email with a warning letter to remove advertisements for the guest suite rental posted online by the tenants.
- March 7, 2022- the landlord/agent posted a "24 Hour Notice to View" the subject rental property for the purpose of inspection on March 8, 2022 between 5:30 p.m. to 6:30 p.m. This "24 Hour Notice to View" was changed the same day to view the subject rental property on March 11, 2022.

- March 8, 2022- the landlord requests via text that the inspection be moved to March 12, 2022. The tenants declined. The March 11, 2022 inspection was then cancelled.
- March 8, 2022- the landlord/agent posts a warning letter on the tenant's door instructing the tenants to remove the RV parked on the property and have unapproved additional occupants move out of the subject rental property.
- March 10, 2022- the landlord/agent posts a "24 Hour Notice to View" the subject rental property for the purpose of inspection on March 15, 2022 between 5:00 p.m. to 5:30 p.m.
- March 15, 2022- the landlord and agent attend at the subject rental property and complete an inspection.
- March 18, 2022- the landlord/agent posts a warning letter on the tenant's door regarding no smoking in the subject rental property, requesting the unauthorized occupant vacate the subject rental property, and the RV to be removed.
- March 21, 2022- the landlord/agent posts a "24 Hour Notice to View" the subject rental property for the purpose of inspection confirming the issues identified in the March 18, 2022 warning letter have been rectified. The inspection is set for March 25, 2022 between 11:00 a.m. and 11:30 a.m.
- March 25, 2022- no inspection occurs. The landlord/agent serves the tenant with a One Month Notice to End Tenancy for Cause (the "Notice").
- April 13, 2022- the landlord/agent posts a "24 Hour Notice to View" the subject rental property for the purpose of inspection on April 18, 2022 between noon and 12:30 pm.
- April 18, 2022- the day of the inspection the landlord cancels the above inspection because he contracted COVID 19.
- April 21, 2022- the landlord/agent posts a "24 Hour Notice to View" the subject rental property for the purpose of inspection on April 27, 2022 between 5:15 p.m. and 5:45 p.m.
- April 27, 2022- the day of the inspection the tenants cancel the inspection. The landlord does not complete the inspection.
- April 28, 2022- the landlord/agent posts a "24 Hour Notice to View" the subject rental property for the purpose of inspection on May 3, 2022 at 5:15 p.m.
- May 3, 2022- the landlord and agent attend at the subject rental property for the inspection, the tenants refuse entry. A physical confrontation occurs.

The tenants entered into evidence all of the above described 24 Hour Notices to View, emails, and warning letters.

The landlord testified that during the March 15, 2022 inspection he found that the subject rental property smelled like cigarettes and that smoking is not permitted under the tenancy agreement. Tenant V.G.A. testified that her roommate smokes outside and that smoke can come in through the patio door when it is open. Tenant V.G.A. testified that no-one smokes in the house.

Tenant V.G.A. testified that the tenancy agreement does not restrict roommates and that she is permitted to have one. The landlord testified that after the March 15, 2022 inspection he was concerned for the condition of the house due to the smoking and so decided to conduct monthly inspections and serve the tenants with the Notice. The tenants filed to cancel the Notice and a hearing is scheduled for August 8, 2022. The file number for the above file is located on the cover page of this decision.

Tenant V.G.A. testified that the landlord did not show up for the March 25, 2022 inspection but instead posted the Notice. The landlord did not provide testimony on why the March 25, 2022 inspection did not occur.

The landlord testified that when he attended at the subject rental property on April 27, 2022, for the purpose of inspecting the subject rental property, tenant V.G.A. sent the following text:

We are refusing your right to inspect this evening given that we have already confirmed that our roommate will not be moving out and, that there is no smoking is taking place anywhere inside the home. Both of these matters have since been referred to the RTB. Additionally, as we indicated in a previous email, you are now infringing on our right to quiet enjoyment given that you have no reasonable reason to inspect the property every week. Kindly CEASE AND DESIT!

WE ARE REFUSING TO COMPLY WITH THIS INSPECTION FOR THE REASONS INDICATED ABOVE AND SO WE AGAIN ASK THAT YOU STOP INFRINGING ON OUR RIGHT TO QUIET ENJOYMENT UNTIL SUCH TIME AS THIS MATTER IS RESOLVED AT THE SCHEDULED RTB HEARING.

WE, AS LAWFUL TENANTS, DO NOT GIVE PERMISSION FOR ANYONE TO ENTER/INSPECT OUR RENTAL PROPERTY LOCATED AT [ADDRESS OF SUBJECT RENTAL PROPERTY].

The landlord testified that he went to complete the inspection on April 27, 2022 despite the above text message but the tenants left two large dogs loose in the unit and he did not feel safe entering the home. The landlord entered into evidence videos of the tenants' dogs jumping on the door sliding glass door and barking. The above testimony was not disputed by tenant V.G.A.

The landlord testified that because the tenants refused to allow his monthly inspection on April 27, 2022, as permitted under the *Act*, he served them with another "Notice to View" on April 28, 2022 effective May 3, 2022.

The landlord testified that on May 3, 2022 he attended at the subject rental property with his agent and knocked on the door. The landlord testified that tenant V.G.A. came to the front door and locked it. The landlord testified that he and his agent then headed into the backyard where tenant V.G.A. intercepted them.

The landlord testified that tenant V.G.A. then physically assaulted him in the backyard and forced him off the property. The landlord testified that at one point the tenants were speaking to each other in another language and then tenant V.G.A. says in English to tenant H.A. "No, don't touch them". The landlord testified that tenant H.A. is a large intimidating man and this comment made him feel that his safety was in danger. The landlord testified that between the two tenants, their two large dogs and the assault, he and the agent did not feel safe.

Both parties agree that after the physical confrontation, the tenants called the police. The landlord testified that the officer said he had no authority to force the tenants to grant the landlord access to complete the inspection. The landlord testified that the police officer offered to escort the landlord inside the subject rental property to complete the inspection, but the tenants refused. This was not disputed by tenant V.G.A.

The landlord testified that he applied for this expedited hearing due to the assault in the backyard where he was physically removed from the property. The landlord testified that the assault has left him shaken.

The landlord testified that the agent filmed the assault. The video was entered into evidence and shows tenant V.G.A. yelling and swearing at the landlord and the agent and telling them to get off her property. The video shows tenant V.G.A. grabbing the landlord's arm, pushing and shoving him to the curb. The landlord can be heard to repeatedly say "do not touch me" and "stop pushing me". The landlord in non-

aggressive in the video and repeatedly asks to inspect the subject rental property pursuant to the "24 Hour Notice to View" previously served. Tenant V.G.A. can also be seen grabbing the agent and knocking his recording device out of his hand.

Tenant V.G.A. testified that the landlord attended at the subject rental property nine times in less than a 1.5 month period, all to serve notices or to inspect the subject rental property. Tenant V.G.A. testified that the above infringed their right to quiet enjoyment of the property.

Tenant V.G.A. testified that Residential Tenancy Branch Policy Guideline #7 states that while the landlord is permitted to monthly inspections for a reasonable purpose, but that a reasonable loses its reasonableness if carried out too often. Tenant V.G.A. testified that the landlord attended at the subject rental property too frequently. Tenant V.G.A. testified that the landlord could have e-mailed the 24 Hour Notices to View, the Notice and the warning letters and did not need to attend at the subject rental property to serve them. The tenant testified that the parties signed a RTB Form 51 Address for Service, in which the tenants' provided an e-mail address for service.

The landlord testified that only one of the tenants provided an e-mail address for service and when he contacted the Residential Tenancy Branch to find out if one email address was sufficient, the representative he spoke with said it was a grey area. The landlord testified that to ensure his documents were served on the tenants in accordance with the *Act*, he posted them on the tenants' door. The landlord testified that he would much rather have served via e-mail but the tenants refused to provide an e-mail address for each tenant.

In response to the landlord's testimony to the events of May 3, 2022, tenant V.G.A. testified "I don't want to get into that". Tenant V.G.A. then testified that she told the landlord via text on April 27, 2022 not to come to inspect the subject rental property and he came anyways. Tenant V.G.A. testified that she had a right to escort the landlord off her property. Tenant V.G.A. testified that the landlord showed the video to the police and if there had been any illegal or unwarranted aggression, she would have been arrested. The landlord testified that he declined to press charges against the tenant.

The tenant testified that instead of trying to gain access to the subject rental property through the back door, the landlord should have sought an access order from the Residential Tenancy Branch.



## Analysis

Residential Tenancy Branch Policy Guideline #12 (PG #12) states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

Residential Tenancy Branch Policy Guideline #7 (PG #7) states:

....The Residential Tenancy Act does not require that notice be given for entry onto residential property, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises....

Section 88(g) of the *Act* states that:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person may be served by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord.

Pursuant to section 88(g) of the *Act* and PG #7, I find that the landlord was permitted to attend at the subject rental property to post warning letters, inspection notices and the Notice. I find that while e-mail service may have been available to the landlord, the landlord was under no obligation to choose one valid method of service over another valid method of service. I find that given the landlord's uncertainty regarding the validity of service to only one email address, it was reasonable for the landlord to use an alternate method of service as indicated in PG #7.

While I accept that the tenants did not agree with the contents of the warning letters and the landlord's allegations of smoking, the landlord was still permitted to attend at the subject rental property to serve the tenants. I find that while more notices to view were

served than either party would prefer, the service of those notices does not constitute harassment as the landlord/agent were permitted to serve via posting and some re-scheduling is not totally unexpected given changing availabilities of the parties and the presence of a global pandemic.

Section 29 of the *Act* states:

**29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i)the purpose for entering, which must be reasonable;
  - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
  - (c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
  - (d)the landlord has an order of the director authorizing the entry;
  - (e)the tenant has abandoned the rental unit;
  - (f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Residential Tenancy Branch Policy Guideline #7 states:

....A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,

- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m. ....

....Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A

"reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly....

[emphasis added]

....Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose.....

I find that the tenants were not within their rights to refuse the landlord entry on April 27 or May 3, 2022 because the notices of inspection was more than a month after the March 15, 2022 inspection and were for the reasonable purpose of inspection. I find that this rate of inspection is not too frequent. I find that given the landlord's concerns regarding smoking, whether or not they were accurate, it was reasonable for the

landlord to attend at the subject rental property to inspect the unit for smoking on a monthly basis.

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. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any 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 interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, and*

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

I find that the landlord was entitled to be at the subject rental property on May 3, 2022 because a notice of entry was served on the tenants more than 24 hours before the date and time of entry in accordance with section 29(1)(b) of the *Act*. I find that the timing of the notice of entry complies with section 29(2) of the *Act*, as the previous inspection was more than one month before the May 3, 2022 inspection. I find that the

notice of entry for May 3, 2022 was for the reasonable purpose of inspecting the subject rental property, which the landlord is entitled to do monthly. I find that the notice of entry states the date and time of the entry which is between 8 a.m. and 9p.m., in accordance with section 29(1)(b)(ii) of the *Act*.

Based on the landlord's testimony and the video evidence, I find that tenant V.G.A., without the consent of the landlord, intentionally directly applied force to the landlord, by grabbing, shoving and pushing him, which may constitute assault. I find that the contact was physical forceful and applied against the landlord without permission. I find that the physical force applied against the landlord constitutes an unreasonable disturbance and significant interference with the landlord, contrary to section 47(1)(d)(i) of the *Act*.

I find that it would be unreasonable and unfair for the landlord to wait for a notice to end tenancy under section 47 to take effect given the physical force applied against the landlord. I find that it is unreasonable for the landlord to be put in harms way and or be unable to inspect the subject rental property while waiting for a One Month Notice to End Tenancy for Cause to take effect because of tenant aggression and breach of section 29 of the *Act*.

I note that as suggested by tenant V.G.A, the landlord could have applied for an Order for entry; however, give the physical confrontation, the landlord was also within his rights to apply for an early end to tenancy. I note that many considerations, to which I am not privy, go into the decision of whether or not to lay criminal charges. I find that the lack of criminal charges does not impact my findings regarding the nature of the physical confrontation which was recorded.

Pursuant to my above findings and section 56 of the *Act*, I find that the landlord is entitled to a two-day Order of Possession, which must be served on the tenants.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to deduct \$100.00 from the tenants' security deposit.

Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 entitled to retain \$100.00 from the tenants' security deposit.

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: June 14, 2022

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Residential Tenancy Branch