



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ET, FFL**

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act"). The Landlord seeks:

- an early termination of the tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- authorization to recover the filing fee for this application pursuant to section 72.

The Landlord, the Landlord's advocate ("JC") and the two Tenants ("PF" and "KM") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

The Landlord stated he served the Notice of Dispute Resolution Proceeding and the Landlord's evidence (collectively the "NDRP Package") on the Tenants' door on June 24, 2022. The Landlord submitted a Proof of Service on Form RTB-9 to corroborate his testimony on service of the NDRP Package on the Tenants. There was no evidence the Landlord served each of the Tenants individually with the NDRP Package. However, as both Tenants attended the hearing, I find the NDRP Package was sufficiently served on the Tenants pursuant to section 71(2)(b) of the Act.

### Preliminary Matter – Service of Landlord's Additional Evidence on Tenants

The Landlord stated he served additional evidence on the Tenants' door on July 5, 2022 in response to evidence that had been served on the Landlord by the Tenants. PF

acknowledged the Tenants received the Landlord's additional evidence and they had the opportunity to review it. Rules 3.14 and 3.17 of the *Residential Tenancy Branch Rules of Procedure* state:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

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 arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment]

The Landlord did not serve the additional evidence on the Tenants at least 14 days before this hearing as required by Rule 3.14. The Landlord stated it was new evidence submitted to respond to evidence submitted by the Tenants. PF acknowledged the Tenants received the evidence and had reviewed it prior to the hearing. As such, I find the Landlord's evidence to be new and relevant evidence and admissible for the purposes of this hearing pursuant to Rules 3.17.

### Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and an Order of Possession?
- recover the filing fee for the Application from the Tenants?

### 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 Application and my findings are set out below.

The Landlord stated he purchased the residential property ("Property") on February 9, 2022. The tenancy agreement between the Tenants and the predecessor landlord states the tenancy commenced on May 1, 2021, on a month-to-month basis, with rent of \$1,200.00 payable on the 1<sup>st</sup> day of each month. The Tenants were to pay a security deposit of \$600.00 on May 1, 2021. The Landlord stated the Tenants paid the security deposit and he is holding it in trust on behalf of the Tenants. PF confirmed the foregoing details of the tenancy. I find there is a tenancy between the Tenants and the Landlord, the latter being the successor in title to the rental unit.

The Application provided the following information on why the Landlord is seeking to end the tenancy early pursuant to section 56 of the Act:

June 20.22 [Landlord] requests 24 hr inspection to see if the unit has adequate smoke alarms. Fire extinguishers and safety measures in place. to inspect the existing owners appliances. She threatened to call the cops on us. How do we enforce safety if she wont [sic] let us in? She screams at us to not even knock on her door. June 18<sup>th</sup> shared laundry room fire – fire dept. requested tenants

vehicles to be moved for safety – we told him the tenant is inside and wont [sic] come out – chief told us to leave him be.

The Landlord stated he made an application for dispute resolution to seek an Order of Possession based on a Two Month Notice for Landlord's Use of Property which the Tenants have disputed. The Landlord stated he thought that application would be heard at the same time as this Application. The Landlord stated the Tenants have not vacated the rental unit and, as a result, he and JC are currently living in a recreational vehicle parked on the property.

The Landlord stated the causes for seeking an early end of the tenancy pursuant to section 56 are because the Tenants or a person permitted on the residential property by the Tenants have:

- 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; and
- put the Landlord's property at significant risk.

The Landlord stated a notice seeking access to the rental unit on June 20, 2022 at 12:00 pm to perform a safety check was served on KM in-person on June 20, 2022. The Landlord stated the Tenants did not provide access to the Landlord in accordance with the access notice.

JC stated the very first day she arrived on the Property on February 18, 2021, she was going to use the weed whacker to improve the appearance of the common grounds. JC stated that PF came up behind her without a shirt and his pants falling off and was recording her. JC stated PF told her she was not allowed on the Property and that he was going to call the police. JC stated she is opening a business in the area which necessitates that she travel between her office and a storage area located on the Property. JC stated JC records her frequently when she is on the common areas of the Property. JC stated there are also security cameras attached to the outside of the rental unit that record the entire common area of the Property. JC stated the recording of her by PF, and the recording by the security cameras on the rental unit, make it extremely uncomfortable in the shared space. JC stated KD has not spoken to her at all and PF avoids the Landlord and JC.

JC stated that, after the Landlord made the Application, she saw KD was hiding around the corner and PF came to the sliding door of the mobile home. JC stated she opened the sliding door and told PF to stay back as she had a dog inside and that she would come outside. However, PF stuck his hand through the open door and passed documents to her and stated: "You have been served".

JC stated the Landlord sent a written request to the Tenants to park on the area beside the rental unit. The Landlord stated that, prior to the eviction of all of the tenants, there was theft and damage going on. The Landlord stated he was advised by the RCMP to board up the laundry room and not use it before the fire. The Landlord submitted into evidence a letter dated April 21, 2022 to the Tenants in which the Landlord advised the Tenants that, due to vandalism in the laundry room, the room has been disconnected until repaired. The letter also requested the Tenants use the laundry machines in the Tenants' rental unit. JC submitted a letter dated June 19 2022 in which the Landlord requested the Tenants provide identification and other personal information including a consent to a criminal records check. In that letter, the Landlord asked the Tenants to use the parking area beside the rental unit, where one of the Tenants' cars is currently parked.

JC stated PF parks his car in front of the rental in a share access area to which the unit in which the laundry is located. JC stated that as a result, it makes it difficult for the Landlord and other residents of the Property to access the laundry room. JC stated there was a fire in the laundry room on or about June 18, 2022 and the fire department was called. JC stated three fire trucks arrived on site. JC stated, as a result of PF parking his motor vehicle in the shared access area, one of the fire trucks needed to do an eight-point turn to access the laundry room.. JC stated the laundry room is located in a unit next to the Tenants' rental unit. JC stated the fire department asked that PF's truck be moved when they attended at the laundry room. The Landlord stated the fire occurred when the Landlord was using the laundry and it was not the fault of either of the Tenants. The Landlord stated the fire was extinguished by the time the fire department arrived. The Landlord stated he asked if they should know on the Tenants' door to get the to move PF's motor vehicle but was told it was not necessary. When I asked what the potential was for a fire to reoccur, JC stated the Landlord has removed the machine from the laundry room and they have boarded up the room and turned off the power for the time being. JC stated the firefighters told her that they know the Property has been a really big problem for the community.

JC stated KD drives through the Property aggressively with the music turned on high and she does not feel safe.

JC stated that, on or about June 12, 2022, an unknown vehicle parked in front of the Tenant's rental unit and she observed a male, who is not one of the Tenants, go up to the 2<sup>nd</sup> and use a key to access the rental unit. JC stated the male person was inside the rental unit for about 10 minutes while the female driver the car waited. JC stated she observed the male come out with a computer screen and keyboard. JX stated the male spat on the stairs and tossed his lit cigarette in the grass. JC stated it did not appear the Tenants were home at the time but admitted she did not know if the Tenants had given those two people permission to be there.

JC stated she observed PF opening the door to their rental unit and a large amount of smoke came out. JC admitted the Tenants might not have a functional hood fan and that might have been the reason PF opened the door to let the smoke out.

PF stated the Tenants have done nothing wrong and denied the Landlord's allegations. PF stated that, on the day of the fire, KD was at work and he was in bed with COVID-19. PF stated he was not aware his motor vehicle was blocking the fire trucks. PF stated that it was the Landlord and JC that caused the fire in the laundry room which is four feet away from the rental unit. PF stated no one knocked on his door to warn him there was a fire in the building next to 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.

The conditions that must be met 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 in the manufactured home park 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 Landlord stated he was seeking to end the tenancy based on the causes set out in subsections 56(2(a)(i), 56(2(a)(ii) and 56(2(a)(iii) of the Act. Those subsections use the adjectives “significantly”, “unreasonably” or “seriously” as part of the description of the activity or conduct that the Landlord must prove in order to demonstrate the activity or conduct is sufficient to warrant the eviction of the Tenants.

The Landlord stated he served a notice seeking access to the rental unit on KM in-person on June 20, 2022. The access notice stated the Landlord sought access to the rental unit on June 22, 2022 at 12:00 pm.

- 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;

The written notice for access was served on the Tenants in-person more than 24 hours before the scheduled time and date for access. Although the Tenants refusal to give the Landlord access to the rental, when required by the notice, violated the Landlord’s right to access the rental unit, I do not find it would be it would be unreasonable, or unfair to the Landlord or other occupants of the Property, to wait for a notice to end the tenancy under section 47 of the Act.

JC stated that, while she is on the common areas of Property, PF frequently comes out of the rental unit with his shirt off and records her. PF stated that, on the very first day she arrived on the Property, PF came up behind her without a shirt and his pants falling off. JC stated PF used his mobile to record her and told her she was not allowed on the



Property and that he was going to call the police. JC stated there are security cameras attached to the outside of the rental unit that record the entire common area of the Property. JC stated the recording of her by PF, and the recording of residents by the exterior security cameras, make it extremely uncomfortable in the common areas of the Property. Although the conduct of JF frequently recording JC may constitute harassment, I do not find it would be unreasonable, or unfair to the Landlord or other occupants of the Property, to wait for a notice to end the tenancy under section 47 of the Act.

JC stated that, after the Landlord made the Application, PF came to the sliding door of the mobile home in which she and the Landlords are residing. JC stated she opened the sliding door and told PF to stay back and that she would come outside. JC stated PF stuck his hand through the open door and passed documents to her and told her she had been served. I do not find this incident significantly interfered with or unreasonably disturbed an occupant or the Landlord nor do I find it seriously jeopardized the health or safety or lawful right or interest of JC or the Landlord.

JC stated there was a fire in the laundry room on or about June 18, 2022 and the fire department was called. JC stated that, as PF had parked his car in a common area near the laundry room, an attending fire truck was required to make an eight-point turn to access the scene. The Landlord admitted that he and JC had started the fire in the laundry room and it was not the fault of the Tenants. The Landlord stated the machine was subsequently removed, the power turned off and the laundry room boarded up. The fire trucks were able to maneuver around PF's motor vehicle and the firemen told the Landlord and JC not to bother the Tenants. I do not find PF's parked car located nearby the laundry room significantly impacted the ability of the firefighters to extinguish the fire in the laundry room. As such, I find the Landlord has not demonstrated, on a balance of probabilities that the Tenants put the Landlord's property at significant risk.

JC submitted a letter dated June 19 2022 in which the Landlord requested the Tenants provide identification and other personal information including a consent to a criminal records check. In that letter, the Landlord asked the Tenants to use the parking area beside the rental unit, where one of the Tenants' cars is currently parked. The Act does not require a tenant to produce any form of identification or consent to a criminal records check to a successor landlord. At the time the original landlord considered entering into a tenancy agreement with the Tenants, the original landlord could have requested information from the Tenants that did not violate the privacy laws of British Columbia. Successor landlords have the option of requesting the former landlord provide them with the information that was provided by the tenants at the time the

tenants were being considered for a tenancy, but a successor landlord does not have a right to request personal information from existing tenants. Section 28 of the Act states:

- 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
  - (b) freedom from unreasonable disturbance;
  - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
  - (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 28 prohibits other residents, and the landlord, from violating the tenant's right to quiet enjoyment of the rental unit. Section 28(a) provides a tenant is entitled to reasonable privacy. A landlord cannot seek to end a tenancy early pursuant to section 56 on the basis that the tenant has refused to provide information to the Landlord that the tenant is not required to provide. Furthermore, the privacy rights of residents of British Columbia are also protected by other legislation such as the *Personal Information Protection Act*. I find that the refusal of the Tenants to provide any personal information or consent to a criminal records check, does not constitute a cause for ending a tenancy early under any section of 56(2)(a) of the Act.

JC stated KD drives through the Property aggressively with the music turned on high and she does not feel safe. JC did not submit any evidence, or call any witnesses, to corroborate her testimony that KD's driving was a risk to other residents of the Property. I do not find the Landlord has demonstrated, on a balance of probabilities, that KD has seriously jeopardized the health or safety of the Landlord or other occupants of the Property.

JC stated that, on or about June 12, 2022, an unknown vehicle parked in front of the rental unit and she observed a male, who is not a tenant, go up to the 2<sup>nd</sup> floor and use a key to gain entry. JC stated he was inside for about 10 minutes while the female driver of the motor vehicle waited. JC stated she observed the male come out with a computer screen and a keyboard. JC stated the male spat on the stairs and tossed his lit cigarette in the grass. JC stated it did not appear the Tenants were home at the time but admitted she did not know if the Tenants had given permission for them to be there. I do not find this incident significantly interfered with or unreasonably disturbed an occupant or the

Landlord nor do I find it seriously jeopardized the health or safety or lawful right or interest of the Landlord or an occupant of the Property.

JC stated she observed PF opening the Tenant's door to let a large amount of smoke out of the rental unit. JC admitted the Tenants might not have a working hood fan and that might have been the reason PF opened the door. I do not find this incident significantly interfered with or unreasonably disturbed an occupant or the Landlord nor do I find it seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant of the Property.

Based on the foregoing, I find the Landlord has not proven, on a balance of probabilities, that there is cause to end the tenancy early pursuant to section 56 of the Act. As such, I dismiss the Application without leave to reapply.

As the Landlord has not been successful in the Application, I dismiss, without leave to reapply, his claim for reimbursement of the filing fee of the Application from the Tenants.

### Conclusion

The Application is dismissed in its entirety.

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: July 16, 2022

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Residential Tenancy Branch