



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes     ET, FFL

### Introduction

On July 7, 2022, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

D.T. attended the hearing as an agent for the Landlord. A.A. attended the hearing later as a witness for the Landlord. N.M. attended the hearing as well. He indicated that he was an occupant of the Tenant, that his name was not on the tenancy agreement, that he had not signed a tenancy agreement with the Landlord, and that he had not paid any monies to the Landlord. Moreover, he acknowledged that he did not have any authorization from the Tenant to represent the Tenant at this hearing.

D.T. was asked for her position on this person being permitted to participate in the hearing. She reiterated that N.M. was not a Tenant, but was simply a person that the Tenant let live with him in the rental unit. As such, he should not be able to attend the hearing on the Tenant’s behalf as he was not on the tenancy agreement and had not paid any money to the Landlord.

When reviewing this situation, there is no evidence before me that N.M. would be considered a tenant by definition of the *Act*, and there is no evidence that a Landlord/Tenant relationship was ever established between him and the Landlord. As such, I am not satisfied that this person is permitted to participate in this hearing as he is not a tenant under the *Act*, nor was he permitted to represent the Tenant in this hearing. Consequently, he was asked to remove himself from the teleconference. At this point, N.M. remained silent, but it was obvious that he was still connected to the

hearing. He was then informed that if he did not disconnect from the hearing as directed, that I would eject him from the teleconference. Again, he remained silent as if to appear that he had left the hearing. From the teleconference system, it was obvious that N.M. refused to exit the hearing. As a result, I then removed N.M. from participating in the teleconference by disconnecting his phone line.

At the outset of the hearing, I informed D.T. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation. A.A. provided a solemn affirmation later in the teleconference when he joined the hearing.

D.T. advised that she served the Tenant the Notice of Hearing and evidence package by hand and by posting it to the Tenant's door on July 22, 2022, and she referenced the proof of service document submitted to corroborate service. She also advised that additional evidence was served by hand to the Tenant on August 1, 2022, and that she confirmed that the Tenant could view the Landlord's digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure. Based on this undisputed evidence, I am satisfied that the Tenant was duly served the Notice of Hearing and evidence packages in accordance with the *Act* and Rules of Procedure. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.T. advised that the tenancy started on June 1, 2022, that rent was established at \$2,100.00 per month, and that it was due on the first day of each month. A security deposit of \$1,050.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She testified that the Tenant was likely duped into letting N.M. move into the rental unit with him. She stated that the Tenant vacated the rental unit in mid-June due to safety concerns as a result of N.M.'s behaviours, but N.M. has continued to occupy the rental unit as an illegal occupant and a trespasser. She submitted that N.M. has been running electrical devices, all day and night, that vibrate the walls and emit loud piercing noises. As well, he will play excessively loud music 24 hours of the day. This has caused the other residents of the building not to be able to sleep. In addition, she advised that N.M. will shout about the devil and demons, and he has threatened other residents of the building, while also hurling racial epithets at them.

Moreover, she stated that N.M. will peer into other residents' windows, and that the other residents are so fearful for their safety that they have "go bags" in case they need to vacate their units quickly. Finally, she testified that N.M. has removed the knobs from the doors to the rental unit, that he has boarded up the windows and the locks, and that he has barricaded the rental unit so that no one can enter. As a result, N.M. enters and exits through the window. She referenced the documentary evidence submitted to support these submissions.

A.A. was then permitted to enter the hearing to provide his testimony. He advised that he lives on the property in another unit, and N.M. has installed "sound units" that play music all day and night at an excessive volume, rendering sleep impossible. Moreover, N.M. will routinely make construction type noises from midnight to 6 AM. This has made it impossible for him and his partner to sleep in the bedroom, so they sleep in the living room instead. He stated that the walls vibrate from the amount of noise N.M. makes. He submitted that on one occasion, his partner returned to the home late one night and N.M. followed her, looked right into their window, commented that he could see right into their rental unit, and then knocked on their door. As it was late, and as she was fearful for her safety, she did not answer the door. He confirmed that N.M. has barricaded the rental unit and that N.M. enters and exits through the window.

## Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant, or a person permitted on the residential property by 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.*

I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I also note that the threshold of evidence required to justify an early end of tenancy Application is much higher than that of an Application for an Order of Possession based on a One Month Notice to End Tenancy for Cause.

When reviewing the totality of the evidence before me, I am satisfied that N.M. is not a tenant of the rental unit and that he was brought into the rental unit by the Tenant. As such, this person has no rights or responsibilities, that a person defined as a tenant under the *Act*, would ordinarily have. Therefore, the Tenant is responsible for any

actions and behaviours of himself or any other persons that he has invited onto the property.

Moreover, the undisputed evidence is that N.M. has barricaded the entryways into the rental unit, which in my view would pose a serious safety concern should there be an emergency that requires the Landlord to enter the rental unit. In addition, given the fact that N.M. enters and exits the rental unit through the window, this further supports the danger of this situation, as well as the inability for anyone to access the rental unit in a conventional manner.

Furthermore, when reviewing the testimony and documentary evidence, it is undisputed that N.M. has threatened residents verbally and hurled racial remarks at residents of the building. On top of this, I am satisfied that N.M.'s use of electronics that create a loud, constant noise disturbance is intentional, deliberate, and excessive. Additionally, I find it uncontroverted that N.M. has conducted himself in an inappropriate and unacceptable manner. Consequently, I am satisfied that N.M.'s actions and behaviours posed a danger that would fall under all of the aforementioned categories.

The Landlord must also demonstrate that "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 for cause" to take effect. Based on the consistent testimony and documentary evidence, I am satisfied that the Tenant's guest, will continue to behave in a manner that endangers lives and property. Should the tenancy resume in this manner, there is no doubt that there would be a genuine concern for the ongoing safety of the property, of any neighbours, or of any persons that may attend the rental unit or the property.

Under these circumstances described, I find that it would be unreasonable and unfair for the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the Landlord has provided sufficient evidence to warrant ending this tenancy early. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to retain \$100.00 from the security deposit to satisfy this debt.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant, and all occupants, 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: August 9, 2022

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Residential Tenancy Branch