



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Belmont Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the landlord applied on July 12, 2022 to:

- end a tenancy early, pursuant to section 56 of the Act; and
- recover the filing fee from the tenants, pursuant to section 72 of the Act.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served the Notice of Dispute Resolution Proceeding and evidence on the tenant by sending it registered mail on July 22, 2022. The tenant confirmed she had received the landlord's NDRP and evidence with sufficient time to review it and prepare for the hearing. Based on the testimony of the parties, I find the landlord served the tenant in accordance with section 89 of the Act.

The tenant confirmed she did not serve responsive evidence on the landlord.

### Preliminary Matters

The tenant was accompanied in the hearing by an advocate. A second person (HM) had also called into the hearing on behalf of the tenant.

HM testified that the tenant was seeking an adjournment because: 1) HM had not had time to write an affidavit on the matter, and 2) preparation for the hearing was rushed

because the tenant had been released from the hospital on July 15, 2022, following a four-week hospitalization.

HM did not make it clear to me why he could not provide affirmed testimony, and why an adjournment was necessary to allow him to write an affidavit. In accordance with rule 7.20, I stated that if the tenant and her advocate wished for HM to provide testimony, they could ask him to call in. At my request, HM disconnected from the hearing to be on standby to provide testimony.

As the tenant was able to follow my directions, make herself understood, and confirmed that she was prepared to continue with the hearing, and as I had determined that the landlord's materials were served in accordance with the Act, I advised the parties I would be continuing with the hearing. The tenant's advocate, CM, did not object to the continuation of the hearing.

#### Issues to be Decided

- 1) Is the landlord entitled to an early end of tenancy and an order of possession?
- 2) Is the landlord entitled to the filing fee?

#### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began January 1, 2004; rent is \$1,123.00, due on the first of the month; and the tenant paid a security deposit of \$425.00, which the landlord still holds.

The landlord testified that on November 16, 2020 the tenant pulled the fire alarm in the property when there was no fire or other emergency. The landlord testified she was identified from a photo from surveillance in the hall. The photo is submitted as evidence.

The landlord submitted as evidence a letter dated November 8, 2021, from a previous set of tenants, stating that around 2:00 a.m. on November 5, 2021, they were awakened by someone banging on neighbours' doors in the hallway for about 10 minutes. The letter states they were later told it was the tenant.

The landlord testified that again on December 3, 2021, the tenant pulled the fire alarm in the absence of a fire or other emergency. The landlord testified the tenant admitted to his spouse that she had pulled it on purpose.

The landlord submitted that the tenant has been harassing the neighbours in the unit above her, as follows:

- June 2, 2022 – tenant has been knocking on tenants' door, or knocking on her ceiling, and verbally confronting the tenants
- June 12, 2022 – the upstairs tenants reported that every night that week, the tenant had banged on their door, and when they opened the door, she had smiled at them, then ran away
- June 22, 2022 – tenant spat at the upstairs tenants while in the lobby
- June 27, 2022 – tenant “violently” knocking on the upstairs tenant's door, interrupting their sleep at night
- June 28, 2022 – tenant knocking on upstairs tenants' door at night
- July 4, 2022 – tenant accused the upstairs tenants of beaming lasers into her rental unit

Documentary evidence is submitted in support.

The landlord testified that one of the upstairs tenants had been admitted to hospital, and died last week; the landlord submitted that the stress of the ongoing harassment by the tenant had contributed to the upstairs neighbour's death.

The tenant's advocate testified that the tenant has resided in the rental unit since 2004, and, according to the landlord's evidence, previous to the incidences in June 2022, there have only been a couple other incidents in which the tenant has exhibited challenging behaviours.

The advocate testified that the tenant was hospitalized immediately following the recent series of incidences. The advocate testified that the tenant acknowledges the stress her inappropriate behaviours caused other tenants. The advocate testified that the behaviours were caused by the tenant's mental health decompensation, which has now been rectified.

The advocate testified that the tenant was certified under the *Mental Health Act*, and is now under the care of a mental health team, led by a psychiatrist. The advocate read from a letter submitted by the tenant's psychiatrist, who stated that the tenant's illness and symptoms are being managed by a mental health team, and that the tenant's symptoms will likely subside.

The advocate testified that while the tenant can appreciate the landlord's frustration, she was unwell at the time of the incidences, and now has a team supporting her 24 hours a day, 7 days a week. The advocate testified that the landlord has the team's cell phone number, and has contacted them. The advocate testified that team members visit the tenant regularly, and that if there are ongoing concerns, they can be fixed quickly, or, if the tenant is non-compliant, she can be recalled to hospital under the *Mental Health Act*. The advocate submitted that the team feels the tenant is "very solid" at this time, and the team believes the inappropriate behaviours will no longer occur.

The landlord testified that "we are not a care facility," and that should there be an incident, the landlord has no related training, and is also not always onsite. The landlord testified they have many occupants in the building, and the landlord is responsible for the safety and wellbeing of all of them, not just one. The landlord testified that having the tenant in the building is a health and safety issue, as other tenants report that her odd behaviour makes them feel uncomfortable, and because if the tenant pulls the fire alarm again, the landlord and occupants will not know if it is an emergency situation or not.

The landlord confirmed there have been no incidences with the tenant since she was released from hospital on July 15, 2022.

### Analysis

The landlord has applied to end the tenancy early, pursuant to section 56 of the Act.

Section 56(2) states (emphasis added):

- (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 [Policy Guideline 51. Expedited Hearings](#) states that the expedited hearing process has been established for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.

The landlord has provided undisputed testimony and documentary evidence demonstrating that prior to her hospitalization, the tenant had pulled the fire alarm without cause on two occasions, and multiple times in June 2022 had repeatedly disturbed multiple other tenants by banging on other tenant's doors, sometimes in the middle of the night. The landlord testified that the tenant had particularly disturbed the tenants in the unit above hers, on multiple occasions, sometimes in the middle of the night, by banging on their door, and by spitting on them.

The landlord has submitted that the stress of the tenant's behaviours contributed to the health decline and subsequent death of one of the tenants from the unit above the tenant, but has provided no evidence in support. Therefore, I give no weight to the allegation in this decision.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that "arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the [Act]," and that an analysis of a dispute must consider the "post-notice" conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act. While that decision considered a notice to end tenancy, which is not served in the case of an application to end a tenancy early, pursuant to section 56, following the logic of that

decision, I find I must consider the tenant's current circumstances and recent behaviours.

Additionally, I note that the parties agree there have been no further disturbances following the tenant's return from hospital.

Based on the landlord's evidence, I'm satisfied that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. However, as the landlord has not demonstrated there is an imminent danger to the health, safety, or security of the landlord or a tenant, I do not find it would be unreasonable for the landlord or other occupants of the residential property to wait for a One Month Notice to End Tenancy for Cause to take effect.

The respective parties have testified that the tenant has exhibited no inappropriate behaviours since her return from hospital on July 15, 2022, is supported around the clock by a mental health care team, can be recalled to hospital if she is non-compliant with her care plan, and a psychiatrist has indicated they anticipate her symptoms will be controlled.

Therefore, I dismiss the landlord's application for an early end of tenancy, pursuant to section 56 of the Act.

As the landlord is unsuccessful in their claim, I decline to award them the filing fee.

### Conclusion

The landlord's application is dismissed; the tenancy will continue until it is ended in accordance with the Act.

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 09, 2022

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Residential Tenancy Branch