



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **FINAL DECISION**

Dispute Codes      ET, FFL

### Introduction

Both hearings dealt with the landlord's application, filed on July 17, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The "first hearing" occurred on August 12, 2022 and lasted approximately 64 minutes, from 9:30 to 10:34 a.m. The "second hearing" occurred on August 18, 2022, and lasted approximately 52 minutes, from 9:30 to 10:22 a.m.

The landlord attended the first hearing only, not the second hearing. The tenant, the tenant's two advocates, advocate SM ("tenant's advocate") and "tenant's advocate DM," and the tenant's two witnesses, "witness AL" and "witness CH," attended both hearings. At both hearings, all participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The first hearing began at 9:30 a.m. with the landlord, the tenant, the tenant's two advocates, and witness AL present. Witness AL was excluded from the first hearing at 9:36 a.m. and did not return to testify. Witness CH called into the second hearing at 9:36 a.m. and was immediately excluded and left the hearing at 9:36 a.m. No evidence was discussed in the presence of the tenant's two witnesses and both witnesses did not return to testify at the first hearing.

The second hearing began at 9:30 a.m. with the tenant, the tenant's two advocates, and the tenant's two witnesses. Witness AL was excluded from the second hearing at 9:37 a.m. and returned to testify from approximately 9:58 a.m. to 10:13 a.m. Witness CH testified from the outset of the second hearing from approximately 9:35 a.m. to 9:57 a.m.

At the first hearing, the landlord, the tenant, the tenant's two advocates, and witness AL confirmed their names and spelling. At the first hearing, the tenant confirmed the name and spelling for witness CH. At the first hearing, the landlord and the tenant both provided their email addresses for me to send copies of my decision to both parties.

At the second hearing, the tenant, the tenant's two advocates, and the tenant's two witnesses confirmed their names and spelling. At the second hearing, the tenant provided her email address for me to send a copy of my decision to her.

At the first hearing, the landlord stated that he owns the rental unit, and he provided the rental unit address.

At both hearings, the tenant confirmed that her two advocates had permission to assist her.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of any RTB hearings by any party. At the outset of the first hearing, the landlord, the tenant, and the tenant's two advocates all separately affirmed, under oath, that they would not record the first hearing. At the outset of the second hearing, the tenant, the tenant's two advocates, and the tenant's two witnesses all separately affirmed, under oath, that they would not record the second hearing.

At the first hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At the second hearing, I explained the hearing process. At both hearings, both parties had an opportunity to ask questions, which I answered. At both hearings, neither party made any adjournment or accommodation requests.

#### Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on August 12, 2022 was adjourned for a continuation after 64 minutes because it did not finish within the 60 minute hearing time. By way of my interim decision, dated August 15, 2022, I adjourned the landlord's application to the second hearing date of August 18, 2022. During the second hearing, the tenant affirmed that the above information was correct.

In my interim decision, I stated the following at page 3:

*I informed both parties that the reconvened hearing is only to hear the testimony from the tenant's two witnesses and to hear response submissions from the landlord. Both parties confirmed their understanding of same.*

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, the tenant confirmed receipt of my interim decision and the notice of reconvened hearing.

I find that the landlord was duly served with copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. The online RTB dispute file notes indicate that the landlord was sent the above documents by email on August 15, 2022, to the email address provided by the landlord at the first hearing. The notes also indicate that the landlord was contacted by the RTB by way of telephone and a voicemail was left regarding the second hearing date on August 15, 2022.

As noted above, the tenant received my interim decision and notice of reconvened hearing. The online RTB dispute file notes indicate that the tenant was sent the above documents by email, and she was contacted by telephone by the RTB on the same date as the landlord, August 15, 2022.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on July 17, 2022, and a notice of hearing was issued by the RTB. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

At the first hearing, the tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In my interim decision, I found that, in accordance with sections 88 and 89 of the *Act*, the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

#### Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

## Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at both hearings, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The landlord purchased the rental unit in September 2021 and continued the tenancy with the tenant. Monthly rent in the current amount of \$812.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord received this deposit from the former landlord, when he purchased the rental unit. The landlord continues to retain the tenant's security deposit. The tenant continues to reside in the rental unit.

At the first hearing, the landlord testified regarding the following facts. While the landlord was cleaning up and pressure washing under the stairs, he found plastic-coloured caps and "pokey things." There were diabetic lances, bloody test strips, and Q-tips in the front and back entrances of the rental property. The landlord told the tenant that she needs to stop, and the tenant said it might have happened when she was shaking out her rugs. When the landlord pressure washed, it was easy to see everything and he could see new bloody test strips, lances, and caps, which continued. The landlord was poked with a lance, was concerned and worried, and stopped picking things up. He had to go and find out what to do regarding being poked. The landlord called the police to the rental property, and they said he was digging for problems. The landlord issued a One Month Notice to End Tenancy for Cause ("1 Month Notice"), effective July 1, 2022, a couple months ago. The information on the tenant's timeline is correct. The tenant has not upheld her tenancy agreement regarding cats and the extra person at the rental unit. There is a future hearing scheduled for October 24, 2022, to decide the tenant's application to dispute the 1 Month Notice. The tenant threatened the life of the building manager, so she got a restraining order against the tenant. The tenant is hostile, the landlord feels unsafe, and he cannot keep cleaning up after the tenant's medical supplies.

At the first hearing, the tenant's advocate stated the following facts. The landlord did not see or witness the tenant put her medical supplies on the ground or dispose of them. The tenant stores her supplies in a proper container. The landlord provided signed letters from the community and a neighbour who has lived at the rental property for six years and has never seen the tenant doing the things claimed by the landlord. The tenant provided a letter from her pharmacist stating that the tenant picks up and drops off her medical supplies there and the tenant provided two reference letters from

community agencies. There is no restraining order, as the property manager only made an application to a judge, it was not granted. The police have refused to deal with the uttering threats issue. The tenant's advocate came back from leave to do this hearing. The tenant wants this matter heard in front of the Arbitrator to help the landlord understand that there are rules to follow.

At the first hearing, the tenant testified regarding the following facts. The landlord's information is untrue. There were no charges for harassment against the tenant. The tenant did not threaten to slit the throat of the property manager, and these are lies. At the time of the alleged threat, the tenant was talking to two people who were painting the building. The tenant has 168 used needles in her possession, which is more than the 90 days she has been accused of by the landlord. The tenant went to the pharmacy and told them she was keeping the needles for evidence. It is hard to live at the rental property, she has to close the front door, and the property manager sits at the back door. The tenant has one cat, not three as alleged by the landlord. Everyone else including the manager has pets. When the tenant first talked to the landlord, she apologized and shook her rugs out initially, but then stopped. They are very tiny needles and 100 units in a box. She thinks that the landlord planted the needles because he is trying to get the tenant out to renovate the unit and re-rent it for \$600.00 more in rent per month.

At the first hearing, the tenant's advocate DM testified regarding the following facts. The landlord's manager is trying to harass and force the tenant out. Other occupants have left the rental building, so the rent amounts have gone up. This is the angle of the new owners. The landlord is making the tenant's life miserable. The tenant's advocate DM has been to the rental unit multiple times and never seen a mess there.

At the second hearing, the tenant's witness CH testified regarding the following facts. She approached the tenant to be a witness at this hearing and she was not told what to say by anyone. She is here of her own free will. She is an occupant living in the same rental building as the tenant. There are eight units total in the building, and she lives in one of them. She is not related to the tenant, and they are not friends, just neighbors. She has lived at the rental building for five years. The landlord bought the building a year ago and took over ownership. She has not seen the tenant do anything that she is accused of by the landlord. Her door is 50 feet away from the tenant's door. There is a unit in between the tenant's rental unit and her own unit. She passes by the tenant's entrance in the front and back. She has never seen needles or debris in five years there. Her son plays with the kids next door to the tenant's unit, they play outside in the yard and bushes, and she lets her kids play outside because there is nothing out there. The tenant has not been threatening in any way, as she is helpful, a good neighbor, and

friendly in the rental building. Everyone is always helping out, and there have been no issues in the past five years. She went through the same issue with the landlord when she received a 2 Month Notice of eviction for the landlord to move into her unit. The landlord is engaged and has a \$2 million home, so there is no way that he would want to move into her unit. She filed an RTB dispute against the 2 Month Notice because she thought the landlord was trying to renovate her apartment. The landlord wrote her an e-mail saying he was cancelling the eviction and the next day he changed his mind. She spent three months looking for houses and has two kids, so it was stressful. A couple of days before the RTB hearing, the landlord did not submit any evidence, but she did. The landlord pulled the eviction notice three days before.

At the second hearing, the tenant's witness CH stated the following facts. On May 2, the landlord harassed her regarding her dog and saw another two neighbours with pets. He told the tenant to look for a new place. The landlord drinks and drives, the occupants have called the police, and the police have a lookout, so now the landlord rides his scooter. The landlord harasses people paying low rent in the building. He has knocked on people's doors including hers, often intoxicated and drunk, and saying crazy stuff. The landlord is a different person one day to the next. He walked past her in the building on August 14, and said, "don't be surprised if you get another eviction notice," and he was intoxicated. He told her she cannot have her car uninsured in the driveway, but it is insured, although there is no insurance sticker anymore. She has two boys that are 14 years old and 17 years old. The 17-year-old moved away. The 14-year-old used to play outside, four years prior. She shares a porch with the tenant. Everyone passes by the tenant's rental unit to go to the laundry because it is under the tenant's porch. The property manager claimed that the tenant threatened her and stated that she was worried for her safety. Yet, she went out of her way to be in the tenant's area, and this would not happen if she was afraid of the tenant. The property manager makes accusations regarding the areas under and near the porch. The tenant told her that the property manager threatened the tenant to "watch her back."

At the second hearing, the tenant's witness AL testified regarding the following facts. He has not been told what to say, prior to this hearing and he is here of his own free will. He is married to the tenant since 2007 and he has lived with her the whole time. The landlord has caused stress for the tenant and he has targeted a couple of people in the rental building. Things were ok until the property manager moved into the rental building at the beginning of May 2022. The tenant opened her front door and was told by the property manager to "watch your back," if the tenant reported her. The tenant went to the police, who talked to the property manager and told her to stay away. He thought that the manager would stay away, but things have become worse. There was a text message saying that they found the tenant's strip, but the tenant is very careful.

The tenant is good at managing medication and appointments with his medical issues. They have a reputation in town. The property manager opened the back door and was screaming about evicting the tenant from the rental building.

At the second hearing, the tenant's witness AL stated the following facts. The tenant spoke to the landlord, and he left a voice message yelling and saying how dare you do that to the property manager and saying he will evict her. The property manager said that the tenant threatened to slit her throat, but the tenant did not see her that day and the landlord is trying to team up with the property manager against the tenant. The tenant is friendly, and no one knows the tenant is diabetic, except the property manager because they used to do a work course together before. The tenant keeps her diabetic needles in the case and disposes of them. It is not true what the landlord said. The property manager used to lease a restaurant and the tenant cooked for her and gave her a good price. When there was an issue with the management, the tenant quit in 2017. She used to help the property manager with her banquets at the golf course from 2016 to 2017. In the last three days, the landlord locked the garbage bin and did not give a key to the tenant, so the garbage is closed.

At the second hearing, the tenant's advocate stated the following facts. The landlord applied for an expedited hearing for health and safety reasons because he claims that he and other occupants are in jeopardy. The landlord did not show up to the second hearing, he has no courtesy, and he wasted everyone's time. The tenant's advocate expects more hearings to occur in the future, which is unfortunate. He has known the tenant for a long time, and she is the least likely "person on the planet" to do the stuff that she is accused of by the landlord.

At the second hearing, the tenant testified regarding the following facts. She has been living at the rental unit for 12 years and has kept the peace, paid her rent, does not cause any trouble, and follows the rules. There have been no issues with anyone only the property manager and the new landlord. The tenant had to buy a security camera for both sides of her windows and there have been no complaints since then. The landlord has planted stuff against the tenant. The property manager is a bylaw officer in town and abuses her power. She has known the property manager since 2017, as she used to cook for her banquets. The property manager got too close to her personal life and would tell the tenant how to live her life, so she told the property manager to back off and leave her alone. She never saw the property manager again until she moved into the rental property and then the problems started. The tenant wants to leave the rental unit but needs her own time to find a place. She is a diabetic and has fibromyalgia. The tenant cannot control her diabetes because of the stress and anxiety and has gone to the hospital. She wishes there is somewhere to move but there is

nowhere to go. The occupant in the unit beside her pays \$550.00 more in rent to the landlord.

At the second hearing, the tenant's advocate DM stated the following facts. The tenant has lived at the rental property for 12 years and the tenant's witness CH has been there for five to six years. There were no accusations before that. These are serious accusations regarding the needles when there are kids at the rental property. No one found any needles. The landlord is targeting, harassing, and causing stress to the tenant. The tenant's advocate DM has never seen any of these things, including needles, at the rental unit when he has visited the tenant.

### Analysis

#### Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present his application, claims, and evidence. The *Act*, *Regulation*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlord to provide evidence of his claims and prove his application, in order to obtain an order of possession.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord served this application package to the tenant, as required. The landlord received two documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") dated July 25, 2022 and August 15, 2022, from the RTB. These documents contain the phone number and access code to call into both hearings.

The NODRP documents state the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*



- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not properly present his claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so, as per Rules 7.17 and 7.18 of the RTB *Rules*. The landlord only testified at the first hearing. The landlord did not attend the second hearing to provide any response submissions to the tenant's evidence. As noted above, the landlord was duly served with my interim decision and notice of reconvened hearing by the RTB on August 15, 2022 and failed to appear at the second hearing and diligently pursue his application.

The first hearing lasted 64 minutes, so the landlord had ample opportunity to present his application. The landlord did not review or explain his documents at the first hearing, when he presented his submissions.

### Findings

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

At the first hearing, the landlord did not testify about which one of the above parts of section 56(a) of the *Act*, are relevant to this application.

Residential Tenancy Policy Guideline 51 states the following, in part:

### B. EXPEDITED HEARINGS

*... These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...*

...

## C. TYPES OF EXPEDITED HEARINGS

### *Early End of Tenancy*

*Under section 56 of the RTA and section 49 of the MHPTA, a landlord may apply to end a tenancy early and obtain an order of possession if 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 to take effect under section 47 the RTA or section 40 of the MHPTA [landlord's notice: cause], and a tenant or their guest has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or manufactured home park;*
- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity (see Policy Guideline 32: Illegal Activities) that:*
  - *has caused or is likely to cause damage to the landlord's property,*
  - *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 manufactured home park,*
  - *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or*
- *caused extraordinary damage to the residential property or manufactured home park.*

*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.*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the Act. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

I find that the landlord did not provide sufficient testimonial or documentary evidence to support his application, as per Residential Tenancy Policy Guideline 51. The landlord had ample time to provide evidence prior to the first hearing, as his application was filed on July 17, 2022, and the first hearing occurred on August 12, 2022. I find that the landlord failed to sufficiently review or explain his documentary evidence during the first hearing. I find that the landlord's testimonial evidence at the first hearing was insufficient to prove the urgency of this application.

The landlord referred to the tenant not complying with the tenancy agreement by having cats and an extra person at the rental unit. The above issues are not relevant to this application for an early end to tenancy, as it is not contained in section 56 of the Act above.

The landlord failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord testified that he issued a 1 Month Notice to the tenant. A copy of the notice was provided for this hearing. The notice is dated May 31, 2022, and the effective move-out date is June 30, 2022. Both parties agreed that a future RTB hearing is scheduled for October 24, 2022, to determine the 1 Month Notice. The file number for the future RTB hearing appears on the cover page of this decision. I find that it would not be

“unreasonable” or “unfair” to wait for a 1 Month Notice to be determined at the future RTB hearing on October 24, 2022.

Accordingly, I dismiss the landlord’s application for an early end to this tenancy and an Order of Possession, without leave to reapply.

I make no findings regarding the merits of the 1 Month Notice, as a future RTB hearing on October 24, 2022, regarding that notice, will determine same.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord’s entire application is dismissed without leave to reapply.

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 15, 2022

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Residential Tenancy Branch