



# 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") for:

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

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:02 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent ("CC") and the Landlord's legal counsel ("AC") 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 confirmed the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that CC, AC and I were the only ones who had called into this teleconference.

AC stated the NDRP and the Landlord's evidence (collectively the "NDRP Package") was served on the Tenant in-person on July 19, 2022. AC submitted a signed and witnessed Proof of Service on Form RTB-9 certifying the NDRP Package was served on the Tenant to corroborate his testimony. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

AC stated the Tenant did not serve any evidence on the Landlord for this hearing.

### Issues to be Decided

Is the Landlord entitled to:

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

### 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.

AC stated the tenancy commenced on March 1, 2022, for a fixed term ending March 31, 2023, with rent of \$1,925.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$962.50 by March 1, 2022. AC confirmed the Landlord received the security deposit from the Tenant and the Landlord is holding it in trust for the Tenant.

The information provided in the Application stated the cause for ending the tenancy early was because:

The tenant has been caught on security camera repeatedly breaking into the mailboxes of other tenants and stealing their mail. The police have advised that the tenant, who signed the tenancy agreement as Wilfred Sun, is actually [JH] and has been charged with mail theft and fraud. He was previously charged with identity theft-related crimes in Saskatchewan but escaped custody in 2021. He is a present threat of property and identity theft to the other tenants of the rental property.

CC stated the Tenant provided false identity documents at the time he made his application for the rental unit. CC stated the Landlord was informed by police that the Tenant's real name was JH. CC stated that, shortly after the Tenant moved into the rental unit, another tenant of the residential property reported in early March 2022 that a package she was expecting went missing. CC stated the Landlord installed a security camera near the mailboxes in the residential property after this incident. CC stated that, on May 5, 2022, she viewed the recorded security video and saw the Tenant pick up a package laying on the floor. CC admitted she could not see the addressee on the

package and was unable to determine if the package was for the Tenant or someone else. CC stated another tenant of the residential property had a package go missing on May 30, 2022 and she viewed the security footage after that report and she saw the Tenant using a tool to get into the upper and lower decks of mailboxes, in which approximately 35 individual mailboxes are located. CC stated she identified person in the security videos breaking into and removing items from the individual mailboxes as the Tenant. CC stated she called the police after viewing the videos. CC stated she was advised by police that the Tenant has been charged with mail theft and fraud.

AC submitted a copy of the lease application from the Tenant to the Landlord for the rental unit, together with the fake identify card provided by the Tenant to an employee of the Landlord at the time he applied to the Landlord to rent the rental unit. AC submitted into evidence a photo of the Tenant that appears on a Crime Stoppers notice around the end of September 2021. AC submitted into evidence an article dated September 29, 2021 that stated RCMP in another province reported the Tenant had escaped custody from a training centre in another province. AC submitted into evidence an article from the city of another province reporting police arrested the Tenant who was in a stolen vehicle in which they seized \$2,500 of drugs. The article stated the Tenant was facing four criminal charges including possession of 10 identify documents.

AC submitted an incident report from the Landlord that indicated \$2,000.00 was caused by the Tenant to the mailboxes in the residential premises. CC submitted into evidence 10 stills from video recordings that shows a person, who she identified as the Tenant, breaking into a deck of mailboxes located in the residential premises and removing the contents from the individual mailboxes. CC submitted into evidence five video clips, four of which show a person, who she identified as the Tenant, actively using a tool to break open decks containing multiple mailboxes and then removing the contents from individual mailboxes located in the decks. AC stated the Tenant told her he is vacating the rental unit but he has not done so yet.

AC stated it is the Landlords position that the Tenant has breached subsections 56(2)(a)(i), 56(2)(a)(ii), 56(2)(a)(iii), 56(2)(a)(iv)(A), 56(2)(a)(iv)(B) and 56(2)(a)(iv)(C) of the Act.

### 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).

*Residential Tenancy Policy Guideline 32* ("PG 32") provides clarification of relevant issues such as the meaning of what may constitute "illegal activity" and the circumstances under which termination of the tenancy should be considered. PG 32 states in part:

### **The Meaning of Illegal Activity and What Would Constitute Illegal Activity**

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

[...]

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

[...]

A breach of a provision of the Legislation may or may not constitute an illegal activity depending on the severity of the breach in respect of the criteria set out above. For example, not paying one's rent contravenes the Legislation. However,

merely not paying rent in and of itself does not constitute an illegal activity. On the other hand, if the tenant went around the residential property harassing the landlord so that he or she could not collect the rent from other tenants, this might constitute illegal harassment and thus be an illegal activity which would warrant terminating the tenancy. Breaches of criminal statutes, if minor or technical, may not rise to the level of illegal activity under the Legislation. However, more serious breaches of the same statute may rise to that level. For example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. On the other hand, running a brothel in the rental unit would be an illegal activity warranting termination of the tenancy.

### **Circumstances for Ending the Tenancy**

The illegal activity must have some effect on the tenancy. For example, the fact that a tenant may have devised a fraud in the rental unit, written a bad cheque for a car payment, or failed to file a tax return does not create a threat to the other occupants in the residential property or jeopardize the lawful right or interest of the landlord. On the other hand, a methamphetamine laboratory in the rental unit may bring the risk of violence and the risk of fire or explosion and thus may jeopardize the physical safety of other occupants, the landlord, and the residential property.

A tenant may have committed a serious crime such as robbery or physical assault, however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property.

I find CC's undisputed testimony to be credible and forthcoming. CC stated the Tenant used false identity documents at the time he applied to rent the rental unit. CC stated the Landlord was alerted to the real identify of the Tenant by police. CC submitted video stills and video recordings of a person, who she identified as the Tenant, breaking into mailboxes located in the residential premises.

CC stated the Tenant was charged with mail theft in connection with the Tenant stealing mail in the residential property that was captured on video recordings submitted by her into evidence. CC stated other occupants of the residential property have reported to the Landlord that their mail has gone missing and have suffered loss and inconvenience.

I have viewed the videos submitted by CC into evidence and observed the person, identified by CC as the Tenant, breaking into the decks for mailboxes and removing items from the individual mailboxes. I find the Tenant has seriously jeopardized a lawful right or interest of other occupants of the residential property in breach of subsection 56(2)(a)(ii) of the Act. I find the Tenant has engaged in a serious violation of the *Criminal Code*, and as such, has engaged in illegal activity as that term is used in section 56 of the Act. I find the illegal activities of the Tenant have caused damage to the Landlord's property in breach of subsection 56(2)(a)(iv)(A) of the Act. I find the illegal activities of the Tenant have jeopardized a lawful right or interest of another occupant of the residential property in breach of subsection 56(2)(a)(iv)(B) of the Act.

CC expressed a fear the Tenant would continue to break into the mailboxes for so long as he remained in the residential property causing loss and inconvenience to other occupants of the residential property. I find the illegal activities of the Tenant have been repetitive in nature that are likely to continue and to interfere with the rights of the Landlord and other occupants as well as cause further losses and inconvenience to other occupants of the residential property. As such, I find the Landlord has provided sufficient evidence to satisfy the requirement of section 56(2)(b) that it would be unreasonable or unfair to the Landlord and other occupants of the residential property to wait for the Landlord to serve a notice to end tenancy to take effect pursuant to section 47 of the Act.

I find the Landlord has proven, on a balance of probabilities, that it has cause to end the tenancy pursuant to sections 56(2)(1)(ii), 56(2)(iv)(A) and 56(2)(iv)(B) of the Act and that it would be unreasonable or unfair to the Landlord and other occupants of the residential property to wait for the Landlord to serve notice under section 47 of the Act. Based on the foregoing, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached Order on the Tenant.

As the Landlord has been successful in its claims, I order the Tenant pay the Landlord \$100.00 for the filing fee of the Application. Pursuant to section 72(2)(b), the Landlord may deduct the \$100.00 from the Tenant's security deposit of \$962.50. The Landlord must manage the remaining \$862.50 of the Tenant's deposit in accordance with the requirements of the Act.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant or anyone on the premises 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 authorized to deduct \$100.00 from the Tenant's security deposit to cover the filing fee of the Landlord's application.

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 3, 2022

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Residential Tenancy Branch