



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

**A matter regarding CANADIAN GENERAL PROPERTY
and [tenant name suppressed to protect privacy]**

DECISION

Dispute Codes **ET, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for early termination of a tenancy pursuant to section 5
- Reimbursement of the filing fee pursuant to section 72.

The agent DC attended for the landlord (“the landlord”) and had opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. They testified the hearing was not recorded.

The landlord provided their email address to which the Decision shall be sent.

Service upon Tenant

As the tenant did not attend the hearing, the issue of service was addressed.

In considering the landlord's testimony and supporting documentary evidence, I find the landlord served the tenant on August 10, 2022 with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

This application is under Rule 10 for an expedited hearing to be heard on short notice to the Respondent. Expedited hearings are for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

Rule 10 of the Rules of Procedure set out the rules for service by the applicant in applications of this type. Within one day of the Notice of Dispute Resolution Proceedings Package being made available by the RTB, the landlord must serve each tenant with stated documents including the Notice of Dispute Resolution Proceeding and the evidence.

Rule 10.3 states as follows:

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, within one day of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- evidence submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

The Director's Order of June 26, 2019 sets out timelines for service. Because service and response time limits are shorter than usual, the permitted methods of service are

restricted. If the hearing date is between six and 11 days after the date the application is made, the applicant must serve the package:

- by leaving a copy with the person
- if the person is a landlord, by leaving a copy with an agent of the landlord, or
- if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

If the hearing date is between 12 and 16 days after the date the application is made, the permitted service methods are:

- by attaching a copy to a door or other conspicuous place at the address at which the person resides
- if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord, or
- by emailing a copy to an email address provided as an address for service by the person

If the hearing date is between 17 days or more after the date the application is made, the permitted service methods are any of the methods set out above, or by sending a copy by registered mail to the tenant's residential address.

The landlord submitted the application on August 3, 2021. The RTB scheduled the hearing for today, September 2, 2022, that is, 30 days later.

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution by posting to the tenant's door of the unit on August 10, 2022, 22 days before the hearing in compliance with the third method above.

The landlord provided a witnessed Proof of Service of Expedited Hearing in the RTB form.

In conclusion, I find the landlord served the tenant on August 10, 2022 with the Notice of Hearing and Application for Dispute Resolution in compliance with the Act.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The landlord submitted extensive documentary evidence including 6 warning letters and 22 written complaints from other occupants. The landlord provided substantial testimony. Not all this evidence is repeated or referenced in the Decision. Only selected evidence is referred to.

The landlord submitted a copy of the agreement with the tenant. They testified as follows with respect to the tenancy background:

Information	Details
Type of building in which unit is located	Multiple apartment building with many families
Type of tenancy	Fixed, 1 year
Date of beginning	October 20, 2021
Monthly rent payable on first	\$950.00
Security deposit held by landlord	\$475.00
Pet deposit	0

The landlord made the following written submission in the application and testified as to the veracity:

- There are two buildings in this complex with ten units in each building and the parking lot is between the buildings.
- There are several families with young children in this complex, as well as several seniors and a few disabled people. Each unit has one parking stall and they are assigned to each unit. Many of our tenants are long term, some over twenty years.
- The tenant, [BS], moved into his unit in October 2021.

- He has a one-year lease for \$950/month with a security deposit of \$475 and no pets.
- Things were fine until March 2022. We began receiving complaints about noise, parking issues, violence, verbal abuse, screaming and yelling obscenities, the constant flow of people going in and out at all times of the day and all night, harassing other tenants of the building. His visitors have been seen trying to pry open his patio door when he is not home. Some of these people have tried to gain entry to other units on the main floor and threatened to steal another tenant's pet cat.
- We have a no-barbecue policy which is stipulated in the addendum of his lease.

In March 2022 he brought in a large propane barbecue and was using it on his patio. He was given notice to remove it and it was removed from the patio two days later. We thought the problem was resolved but when we did a suite inspection on May 9th, the same barbecue was set up and being used inside the suite. This is highly illegal and an extreme fire hazard. He had another barbecue in his storage closet. We gave him 24 hours to remove both barbecues. When we returned the next day to complete the inspection, the large barbecue was gone but the small one was still in the closet. We are genuinely concerned that he will be using the small one inside the suite. This puts the building at risk for fire and all the tenants in the building at risk to lose their homes at the very least.

- Since March, we have received verbal complaints daily regarding this tenant for everything from violence, drugs, harassment, verbal abuse, parking altercations, needles by his door and used needles in the grass beside his suite, windows smashing in the middle of the night, indecent exposure, and urinating on the lawn in front of both buildings during the day. Police have been called many times. There is a constant flow of people 24 hours a day, every day. Some of his visitors have also tried to sell stolen goods to our tenants. When he is not home, his visitors have been seen trying to pry open his patio door. The tenant has also been observed punching a woman in the face and knocking her to the ground. On another occasion, he was seen threatening a woman with a knife.
- We have included the written complaints in the evidence along with photos where possible and when provided. Most of our tenants are too afraid of him and his visitors to put anything in writing - they are afraid of retribution if he should find out they have made complaints.
- We have issued several notices to this tenant regarding these issues, and

they have all been ignored. In fact, the behavior gets worse with every notice issued to him.

- He had also not paid rent for July. We issued him a 10-day notice for unpaid rent on July 7th which he ignored. He did not pay his rent and he did not move out on July 20 as the notice indicated. He has since paid his rent but not until the end of July.
- Today, I received another complaint that his guest had been parked in the driveway, blocking several parking stalls and the garbage bin. This SUV was parked there for over two hours.
- The most recent dangerous event was a fire in the planter box outside by his patio on July 21st. His visitors constantly throw cigarettes in the planter and the peat moss caught fire. We received a message from another tenant that the planter box outside of his patio had been smoldering since around 3PM that day and that he threw a bucket of water on it around 6PM and left the property. We went over to the building to investigate, and we had to call 911

for the fire department to come and put the fire out. The planter is right next to the building and could have caused the building to catch fire.

- We are very worried for the safety of our tenants in both buildings in this complex. They have been terrorized by this tenant and his many visitors for several months. Some of our tenants are afraid to leave their suite for fear of a confrontation. Parents are afraid for their children's safety, especially with used needles found in the lawn area.
- We are concerned that when this tenant is notified of a hearing for possible eviction, the intolerable behavior will escalate for the remainder of his tenancy.
- We are also concerned about damages. His bedroom windows are currently broken for the second time by an associate of his. He replaced them the first time they were broken. They have been broken a second time since June 1st and he refuses to replace them this time. When we inspected his suite in May, we took photos of damages such as broken interior doors, damaged patio door lock, wall damage, etc. We are genuinely concerned that he will do much more damage once he receives a notice of hearing for eviction.
- The safety and well-being of our tenants is by far, the biggest concern. They are terrified and angry with what they have been and are currently being forced to endure from this tenant and his visitors. Our tenants are in desperate need of feeling safe and secure in their homes again. We hope

that you see the need for an expedited hearing in this situation.

The landlord submitted many verbal and written warnings to the tenant and testified that tenant's behaviour continues unchanged.

The landlord stated the tenant still lives in the unit.

The landlord requested an immediate end to the tenancy and an Order of Possession.

Analysis

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

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 on the landlord.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit. The section states:

Application for order ending tenancy early

56 (1) *A landlord may make an application for dispute resolution to request an order*

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and

(b) granting the landlord an order of possession in respect of the rental unit.

Expedited hearings are for serious matters; they are scheduled on short timelines and on short notice to the respondent.

Policy Guideline 51 – Expedited Hearings provides guidance on applications of this nature. The Guideline states that the expedited hearing procedure is 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 Guideline states in part as follows:

Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are 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.

...

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.*

To grant an Order of Possession under section 56(1), I must be satisfied as follows:

56 (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.

(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.

(emphasis added in bold)

The landlord relied on sections (a)(i) and (ii). That is, the tenant had:

- (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;*

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established both grounds, that is, that the tenant has significantly interfered with or unreasonably disturbed people living in the building, and the tenant has seriously jeopardized the health and safety of the occupants of the building, specifically the women he assaulted, one of whom was threatened with a weapon.

I find the tenant has disturbed occupants of the building by creating noise at all times of the day/night. I find the tenant has guests of an undesirable character who come and go at all hours and are believed to be purchasing drugs. I accept the evidence in the many tenant complaint letters that the tenant and/or guests are using needles and leaving used needles in common areas. I accept the evidence that the tenant's behaviour has resulted in the police attending the unit many times thereby disturbing other occupants who are anxious and afraid.

I find the landlord provided credible testimony and sufficient supporting evidence. I find the landlord has established that the events happened in the manner to which they testified. I find the landlord's account of what took place to be reliable and believable.

I find the landlord has shown that there is a reasonable risk of danger or harm to the occupants and a risk of ongoing disturbance to the occupants of the building.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to both sections.

I also find the landlord has met the burden of proof with respect to the second part of the test, as follows:

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.

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to issue a One Month Notice to End Tenancy for Cause in view of the violence exhibited by the tenant's guest, the pattern of disruptive behavior over many months, and the nature of the unacceptable conduct.

Taking into consideration all the oral testimony and documentary evidence presented, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order under section 56 of the Act.

Accordingly, I allow the landlord's application for an early end to this tenancy and an Order of Possession will be issued.

As the landlord has been successful in this matter, I award the landlord \$100.00 for reimbursement of the filing fee which may be deducted from the security deposit.

I caution the landlord to take all reasonable care to protect their safety. I advise the landlord to seek the protection and services of the police and to consult RTB about safety measures going forward.

Conclusion

I grant an **Order of Possession** pursuant to section 56 (Early End of Tenancy) to the landlord effective **on two days' notice**. This Order must be served on the tenant. Should the tenant 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: September 02, 2022

Residential Tenancy Branch