



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act) on September 12, 2022, seeking:

- An early end to the tenancy pursuant to section 56 of the Act; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on October 18, 2022, and was attended by the Tenant, a support person/witness for the Tenant D.K., the Landlord, the Landlord's family member A.J., who is also a co-owner of the property, and a witness B.J. All testimony provided was affirmed. As the Tenant acknowledged personal service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that they have no concerns regarding the date or method of service, the hearing therefore proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

Although the Landlord acknowledged receipt of the documentary evidence before me from the Tenant, The Tenant denied receipt of most of the documentary evidence before me from the Landlord. The Landlord submitted a witnessed and signed proof of service document indicating that the NODRP was personally served on the Tenant in the presence of a witness on September 22, 2022, at 8:55 P.M. The Landlord stated that the documentary evidence before me was also served at that time. The Landlord pointed to a video submitted for my review and consideration showing that the Landlord served the Tenant with documents and that the Tenant threw these documents on the ground. The Landlord called as a witness the person present during service who provided affirmed testimony that the documentary evidence before me from the Landlord was served on the Tenant on September 22, 2022, as shown in the video. The witness expressed that they are not surprised that the Tenant is unaware of some of the documents served, as they witnessed the Tenant throw these documents into the street, and they are not sure when or if the Tenant retrieved them all.

Based on the above, I find that the Landlord and their witness have satisfied me on a balance of probabilities that the documentary evidence before me from the Landlord was personally served on the Tenant on September 22, 2022, despite the Tenant's statement to the contrary. As a result, I have accepted all of the documentary evidence before me from both parties for consideration.

### Issue(s) to be Decided

Is the Landlord entitled to end the tenancy early pursuant to section 56 of the Act?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on August 15, 2022. The Landlord and co-owner stated that they and the Strata have received an unreasonable number of complaints regarding the Tenant and the rental unit since the tenancy began, which was only a few months ago. The Landlord and co-owner stated that in one week alone there were 7 complaints. The Landlord stated that the Tenant has been warned about their behaviour and the behaviour of their guests, but the complaints continue to be received and the Landlord is facing potential Strata fines as a result. The co-owner characterized the Tenant as confrontational and unsuited to Strata living, stating that the Tenant's neighbour is terrified of the Tenant, that the Tenant advised them that they confront homeless people on the street, and that the Tenant advised them that they once took out a bat to "deal with" someone who was coming at them.

The Landlord and co-owner also stated that there are frequently lots of people at the rental unit, that the Tenant and their guests use communal space in a disruptive manner and that there are children around late at night. In support of their position the Landlord submitted the following:

- A letter from the Strata dated September 9, 2022, indicating that several noise complaints had been received about the Tenant and their guests from other occupants of the property;
- A text message stating that 7 complaints had been received regarding the Tenant and cautioning the Landlord about Strata fines;
- An email complaint dated September 9, 2022, regarding an incident on September 7, 2022, where the Tenant and their guests allegedly cause a noise disturbance and used profanity in public;
- An email complaint dated August 19, 2022, regarding noise disturbances and foul language; and
- A photograph of a hole in drywall.

Although the Tenant acknowledged that they were a little loud when they first moved in, they stated that they and their guests use common and outdoor space reasonably, and that they are not a threat to anyone. The Tenant stated that although their neighbour in unit 103 has made complaints against them, they are actually being harassed by that neighbour and are afraid of them. The Tenant pointed to a video in the documentary evidence before me allegedly demonstrating harassment against them from the occupant in unit 103. The Tenant stated that none of the other occupants of the Strata

property have any issues or concerns with them, and that all noise issues have resolved. In support of their position the Tenant submitted a video and letters of support from 5 other occupants of the Strata property.

A witness for the Tenant, D.K., also attended the hearing to provide testimony. D.K. stated that they have been an occupant of the Strata property for 6 years and live within hearing distance of the rental unit. D.K. stated that there are no safety concerns regarding the Tenant, that there is no damage to the rental unit, and that the real issue is the occupant of unit 103 who is harassing the Tenant. Although D.K. acknowledged that the Tenant had a rough start, they stated that all noise issues have been rectified. They also stated that although the Tenant has had family over for things such as BBQ's, they have always wrapped things up by 9:30. D.K. also reiterated that the Tenant has submitted numerous letters from other occupants of the property, all in favor of the Tenant and all saying the same things.

### Analysis

Section 56 of the Act states that a tenancy may be ended early by a landlord without the need to serve a notice to end tenancy on the tenant if an arbitrator is 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 interest 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; or
- caused extraordinary damage to the residential property.

Section 56 of the Act also requires that the arbitrator be satisfied that 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.

Although section 56 of the Act allows Landlords to end a tenancy without the need to serve a notice to end tenancy under section 47 of the Act, in certain circumstances and where it would be unreasonable, or unfair to the landlord or other occupants of the property to wait for a One Month Notice to End Tenancy for Cause to be served and take effect under section 47 of the Act, section 56 of the Act is not intended to expedite matters of possession for a Landlord who could reasonably have served and enforced a One Month Notice instead.

Although the Landlord stated in the Application that the Tenant had threatened to hit an area resident in the kneecaps with a baseball bat and to strangle their immediate neighbor, no documentary or other corroboratory evidence was submitted by the Landlord in support of these allegations. Further to this, the co-owner stated at the hearing that these allegations were based on conversations had with the Tenant, not complaints made to them, the Landlord, or the Strata, and at the hearing the Tenant stated that the co-owner's characterization of these conversations at the hearing is inaccurate. Several letters from other occupants of the strata property were also submitted where in the other occupants of the property state that the Tenant is not a threat or a safety issue, and that the Tenant is in fact being harassed and threatened by their neighbor in unit 103, who is one of the complainants.

Based on the above, I find that the Landlord has failed to satisfy me on a balance of probabilities that the Tenant has engaged in any of the above noted behavior in the rental unit or on the Strata property in which the rental unit is located. Although the Landlord and co-owner argued that there have also been continuous and significant interferences and unreasonable disturbances by the Tenant and their guests since the start of the tenancy, for the following reasons I find that the Landlord has failed to discharge the burden of proof incumbent upon them to satisfy me that is the case. The letter from the Strata dated September 9, 2022, states only that several complaints have been made, but it does not state when or by whom. It also does not provide any significant details about the nature of the complaints, other than that they contravene bylaw 3(1)(a)(b)(c). Although a text message was submitted stating that 7 complaints had been received, it is undated and from an unidentified source. Further to this, it also does not provide any information about the date of the complaints or specifics about the incidents giving rise to them. Although copies of two e-mail complaints regarding the

Tenant dated August 19, 2022, and September 9, 2022, were submitted for my review and consideration, they are both from the same complainant.

In contrast, the Tenant submitted signed letters from five other occupants of the strata property, including the witness D. K. who also provided affirmed testimony at the hearing, that it is not the Tenant who is causing disturbances but rather their neighbor in unit 103. Further to this, the Tenant submitted a video for my review and consideration which I am satisfied shows the Tenant being disturbed by their neighbor, who appears to be inebriated, late at night.

Given the nature and quality of the evidence submitted by the Tenant contradicting the allegations made against them by the Landlord and co-owner, and the lack of detail set out above in the Landlord's documentary evidence, I therefore find that the Landlord has failed to satisfy me on a balance of probabilities that they have grounds under section 56 of the Act to end the tenancy. I therefore dismiss their application in its entirety without leave to reapply.

### Conclusion

The Landlord's Application seeking an early end to the tenancy under section 56 of the Act and recovery of the filing fee is dismissed without leave to reapply. I therefore order that the tenancy continue in full force and effect until it is ended by the parties 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: October 26, 2022

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Residential Tenancy Branch