



# 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 the landlord's application 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 filing fee for this application, pursuant to section 72.

The landlord, the landlord's stepmother, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 52 minutes from 9:30 a.m. to 10:22 a.m.

The landlord stated that his stepmother was attending this hearing to observe only, and she did not testify.

The landlord and the tenant confirmed their names and spelling. They both provided their email addresses for me to send a copy of this decision to them after the hearing.

The landlord stated that he owns the rental unit, and he provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. I informed both parties that I could not provide legal advice to them. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties were given multiple opportunities at the beginning and end of this hearing, to settle this application and declined to do so. Both parties asked that I make a decision regarding this application and confirmed that they were ready to proceed with this hearing.

The landlord affirmed that he was prepared to accept the consequences of my decision if he was unsuccessful in this application, his application was dismissed, he did not obtain an order of possession, and this tenancy continued until it was ended as per the *Act*. The tenant affirmed that he was prepared to accept the consequences of my decision if he was unsuccessful, the landlord's application was granted, this tenancy ended, and a two (2) day order of possession was issued against the tenant.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on August 25, 2022, and a notice of hearing was issued by the RTB on September 13, 2022. 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.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the landlord's application.

The tenant stated that he did not provide any evidence for this hearing.

### 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 landlord's documentary evidence and the testimony of both parties at this hearing, 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. This tenancy began on April 16, 2022. Monthly rent in the current amount of \$2,700.00 is payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. He received information from the strata and building managers at the rental property regarding the behaviour, safety, and aggressiveness of the tenant. He received a letter, dated July 22, 2022, from the strata company with a bylaw notice regarding the use of the property, the aggressive behavior of the tenant, the tenant playing loud music, the tenant setting off alarms, the tenant swearing and glaring at one person for a long time, and the tenant stating: "real men fight with weapons." The tenant allowed two occupants to sleep in his vehicle, which is against the building policy. There was a threat regarding a weapon. This was the first notice regarding safety concerns. The landlord received an email, dated July 27, 2022, from the building manager, regarding the tenant yelling at the employees. The landlord spoke to the tenant and a handwritten agreement was made on July 30, 2022. Both parties agreed that the tenant would only talk to the concierge for emergency matters and the tenant would not let other people into the building, including intoxicated people. The tenant agreed to respect and not engage in any verbal abuse. The landlord received an email, dated August 19, 2022, from the building manager, indicating that the tenant was arrested again, there was a police department incident number given, and they asked for the tenant to move out based on safety and security of the staff. Another official letter, dated August 22, 2022, was received from the strata company, regarding the second notice of the tenant's aggressive behavior, stating that he was unpredictable, giving warnings to other residents that he was looking for them, and stating: "if I shoot, then I shoot to kill." The police told the concierge that the tenant was arrested with weapons drawn. The police department provided a file number, indicating that there were dozens of arrests of the tenant from July to August 2022. The by-law notices were not enough. The landlord received another email from the building manager, stating that there were complaints by residents, and they felt unsafe.

The landlord stated the following facts. There was a third letter, dated August 23, 2022, from strata. The letter states that there was a police incident and arrest from August 20, 2022, regarding aggressive behavior, where the tenant banged and cracked a window. The landlord was charged back for the window costs. The tenant's tattooed friend was

“high and messy.” There were incidents from August 20 to 22. The landlord received an email, dated August 22, 2022, from concierge, regarding the tenant’s aggressive behavior, which cracked the window, and a picture of the smashed glass. The landlord received an email, dated August 22, 2022, from the building manager, regarding the tenant being arrested three times at the building and his threatening and harassing behaviour. The landlord received an email, dated August 23, 2022, regarding a bylaw notice. It discussed how the night concierge felt targeted and was causing stress to all residents on the floor. The landlord received another letter, dated August 24, 2022, from strata, with the charge back for the window cost of \$1,112.34. The landlord had to pay this money out of pocket and was not reimbursed by the tenant. The landlord received an email, dated September 7, 2022, from the building manager, regarding the aggressive unpredictable behavior of the tenant and referring to the September 6 concierge incident. On August 26, 2022, the tenant’s sister went to the concierge, said that her brother bit her on the hand, she did not want to call the police, and she asked to go home. The landlord received an email, dated September 14, 2022, from the building manager, regarding incidents from September 12, of the tenant acting up, confrontations, attitude towards bypassers, and pestering the night concierge. It is the desire of the strata and building managers to kick the tenant out of the building for the safety and wellbeing of the other occupants. No One Month Notice to End Tenancy for Cause (“1 Month Notice”) was served to the tenant. The landlord cannot wait for a 1 Month Notice to take effect because of urgent safety concerns.

The tenant testified regarding the following facts. The two police report file numbers provided by the landlord are not due to verbal threats to concierge or residents. The tenant tapped on the glass window and broke it by accident because he was trying to call the concierge, due to a medical emergency, so he went to their desk. The concierge did not ask him what happened, and they immediately called the police, so he was arrested. When he explained the situation to the police, he was released and not charged with any crimes. He did not have a chance to dispute any allegations at a strata hearing, regarding the breaking of the window, because the landlord did not want to go to a hearing. The dishwasher leaked, which caused damage at the rental unit. There are 400 residents in the rental building and there is a gym there, so when the tenant exits, there are people directly behind him that try to follow him in without buzzing in their code, so this is a safety concern. People also step on the tenant’s shoes and try to grab the door. The tenant is concerned for his safety and the safety of the building if he lets other people into the building without them buzzing in with the proper codes and he told the concierge. There were no allegations, hearings, or strata fines against the tenant, except for the broken glass, which was not deliberate. The landlord stopped contacting the tenant and did not give him a chance to pay or explain what happened.

The tenant told the landlord that he could pay him back for the window, but he needed to pay in installments. The tenant did not receive a notice of this hearing until September 15, 2022, even though the landlord says these issues have been ongoing since July 2022. The tenant was not charged with uttering threats, he did not touch anyone physically, there are no police charges against him, and he has been living there for five months, without any noise complaints. The police arrest was due to his own mental health issue, not any issues with other residents or any other person. He was sent to the hospital for the mental health issue and then released. There are no criminal allegations with the police.

The tenant stated the following facts. There is one person who works on the night concierge staff that has an issue with the tenant. There are four concierge people there full time. There is no evidence from any residents, including complaints or emails to the building managers. There are only emails and information from the building managers and strata. He had a party one time, his friends look intimidating, they got really drunk, and he could not get them out of the car, so he let them sleep there and he stayed there too because he did not want to leave them unattended in the car. He made an agreement with the landlord in July 2022. This is the first time that the landlord is hearing the tenant explain his side of the situation. This is the first time that the tenant is talking to the landlord in 30 days. There are no resident in the building who wrote complaints against the tenant, regarding noise or otherwise. All these observations were made by the night concierge person because he does not get along with the tenant. The tenant does not know if he is racist or prejudiced against the tenant. All other concierge staff get along with the tenant and told him not to talk to the night concierge person. There is no evidence from the landlord, regarding any arrests, names, or police file numbers against the tenant. The landlord has drawn his own conclusions, stating that the tenant is physically aggressive, which is not true. No one has said anything to the tenant or approached him, including any residents. The concierge has glass in front of them and they cannot hear the conversations beyond the glass. The people who made complaints against the tenant are using the gym and do not live in the building. The tenant thinks that the landlord is doing this because of the dishwasher issue.

The landlord stated the following facts in response to the tenant's submissions. He tried to talk to the tenant about the letters and gave copies to the tenant. There was a handwritten agreement made with the tenant. He finds it difficult to communicate with the tenant and he does not want to meet up with him. The tenant's phone number changed, and the landlord asked for the tenant to communicate in writing. When they spoke on the phone, the tenant made threats and was hostile against the landlord. That

is why there is a hearing today. The cost of the glass window has not been paid by the tenant. The tenant has not paid rent for October 2022 to the landlord.

## Analysis

### Burden of Proof

At the outset of this hearing, I informed the landlord, that as the applicant, he 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 a document entitled "Notice of Dispute Resolution Proceeding," dated September 13, 2022 ("NODRP"), from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states 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. During this hearing, I informed both parties that I had 30 days to issue this decision in writing.

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 sufficiently present his claims and evidence, as required by Rule 7.4 of the *RTB Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules*.

This hearing lasted 52 minutes so the landlord had ample opportunity to properly present his application. The landlord simply read aloud many of the documents provided for this hearing, without providing explanations or information regarding how they were relevant to his application.

*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...*

The landlord did not testify about which one of the above parts of section 56(a) of the Act, were relevant to his 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.

The landlord failed to provide sufficient evidence 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 stated that a 1 Month Notice was not issued to the tenant. He did not seem to know what this notice was when I asked him about it and he did not refer to this notice, except to answer my direct questions.

I find that the landlord did not provide sufficient evidence to support his application for this hearing, as per Residential Tenancy Policy Guideline 51 above. The landlord did not produce any witnesses at this hearing, including any occupants, police officers, building managers, concierge, strata agents, landlord agents, or others, regarding behaviour alleged by the landlord in emails and letters. The landlord did not provide any police reports or Court documents regarding criminal charges against the tenant, as alleged by the landlord. The tenant challenged the landlord's documents and evidence, claiming that there were no criminal charges against him, no residents had made complaints against him, and he was not given an opportunity to respond or attend any strata hearings for allegations against him.

The landlord had ample time to provide sufficient evidence and arrange for witness attendance, prior to this hearing, as his application was filed on August 25, 2022, and this hearing occurred on October 4, 2022, over one month later.

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

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: October 04, 2022

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Residential Tenancy Branch