



# 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* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

### **Preliminary Issue: Tenant's Objection to Not Having "Counterclaims" Heard**

At the beginning of the hearing the issues referenced in the landlord's application were discussed with the attending parties. The tenant insisted that they wanted their "counterclaims" to be considered.

Rule 2.11 of the RTB Rules of Procedure states the following about the crossing of applications.

**2.11 Filing an Application for Dispute Resolution to counter a claim**

To respond to an existing, related Application for Dispute Resolution, respondents may make a cross-application by filing their own Application for Dispute Resolution.

The issues identified in the cross-application must be related to the issues identified in the application being countered or responded to.

A party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [*Documents that must be served with the Notice of Dispute Resolution Proceeding Package*] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [*Respondent's evidence provided in single package*] can be met.

In this case, although the tenant referenced a “counterclaim”, no applications have been filed by the tenant in accordance with the Rules of Procedure to be crossed with the landlord’s.

A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case. To proceed with any additional claims that were not properly before the Arbitrator at the time of the scheduled hearing would be a breach of the principles of natural justice and procedural fairness. I further note that RTB Rule 10.8 states that cross-applications for expedited hearings will be heard separately.

For these reasons, the hearing proceeded to deal with the landlord’s application only. The tenant is at liberty to file their own application. Liberty to apply is not an extension of any applicable timelines.

**Other Issues: Conduct in the Hearing**

The tenant was warned several times after repeated interruptions during the hearing, specifically at 9:40 a.m. and 10:41 a.m. Although it is understandable that the tenant may be clearly upset by the presentation of evidence by the other party that they objected to, the tenant was informed that they would have an opportunity to respond or present evidence after the other party was finished, and that interruptions were not permitted. The tenant was also informed several times that no “counterclaims” would be allowed, but that their evidence and testimony would be heard and considered if it was specific to this case. As stated in Rule 7.17 Rules of Procedure about 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.”. The tenant was informed that I had noted their objections. The tenant was also reminded several times of Rule 6.10 of RTB Rules of Procedure which states that “disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.” The hearing proceeded as scheduled and ended at 9:41 a.m. after repeated warnings were given to the tenant. I note that the hearing was scheduled until 9:30 a.m., but additional time was provided to both parties in order for all parties to be heard.

### **Issues(s) to be Decided**

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

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

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on September 1, 2020 with monthly rent set at \$2,100.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,050.00, which the landlord still holds.

The landlord applied for an early end of this tenancy as they feel threatened by the tenant after the tenant had engaged in multiple incidents of harassing behavior towards the landlord and their family. The landlord stated that the tenant’s retaliatory behaviour started after the landlord requested that the tenant comply with a Mutual Agreement to End Tenancy for August 31, 2022.

The landlord provided in evidence detailed descriptions of various incidents which has significantly interfered with the landlord and family’s lawful rights and interests, and the ability to enjoy their home. The landlord and their family moved into the upper portion of the home after the upper tenants left in May 2022.

The landlord testified that the tenant has control of the hot water tank as it is located in the lower unit, and the tenant would intermittently shut off the hot water to the home,

forcing the landlord and their family to bathe their child with boiled water from a kettle. The landlord also testified that the tenant had turned off the forced air heating for twenty-six consecutive days.

The landlord described several incidents which they described as violent and troubling behaviour, including smashing a glass bottle, dumping dead rodents on the property, tampering with the CCTV system by painting the camera, and attempting to cut the wires, as well as vandalizing the landlord's car with paint while the landlord's wife and six year old daughter were inside the vehicle for 20 minutes. The landlord submitted videos and photos of these incidents in evidence. The landlord testified that the tenant has not stopped harassing them despite the fact that the police have attended several times, and are concerned for the safety of the entire family, including their six year old child who witnessed these incidents directly.

The tenant denies turning off the hot water in the rental unit, and argued that the landlord was the harassing party. The tenant admitted in the hearing that they did turn off the gas late at night between the hours of 10:00 p.m. and 7:00 a.m., as this was an agreement that was made with the former upper tenants. The tenant testified that they cannot stand the heat.

The tenant testified that they were being constantly watched by the landlord to the point that they had to take steps to protect their privacy. The tenant testified that they had to put up a parasol for privacy reasons, and the landlord threw it away. The tenant also alleges that the landlord had turned off the water supply, and harassed visitors and accusing the tenant of running a short-term vacation rental. The tenant described various disputes between the parties, which included the dispute about the short term rental, as well as utilities. The tenant submitted photos of showing signs posted by the tenant on the window which state "turn on water", "Do not knock at my window at 1 am midnight or entering my house at any time!", "Do not take anything from my carport", and "I want my 4 paintings back!". The tenant states that the landlord had removed the tenant's signs and threw them at their doorstep, as shown in the photo submitted. The tenant also submitted photos where the landlord had posted signs "Air bnB illegal". The tenant testified that they had mice inside their unit, and the landlord refused to call a professional pest control company. The tenant testified that instead, the landlord placed mouse traps, which the tenant would step on. The tenant described other issues such as the landlord's failure to repair the toilet in a timely manner. The tenant described an ongoing dispute where the tenant felt that they were they were the party being bullied and harassed.

### **Analysis**

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act* for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56 of the *Act*, I need to be satisfied that 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 interests 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;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered.

Both parties had provided detailed written evidence and testimony for this hearing. The tenant disputes the allegations made by the landlord in this application, and testified that the landlord was the harassing party who was unhappy with the tenant.

The landlord testified that the entire family felt threatened by the tenant, and feels that the tenancy cannot continue as the tenant continues to act in a threatening and harassing manner towards the landlord and their family despite the filing of this application, and involvement of the police.

I have considered the submissions and evidence of both parties. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair. As stated in Residential Policy Guideline 51, applications to end a tenancy early are for very serious breaches only.

I find that a series of events had taken place during this tenancy, many of which are disputed by the other party. I will focus on the undisputed facts. In this case, it is clear that both the landlord and tenant now have a strained relationship, which involve disputed allegations of harassment by both parties.

In light of the evidence before me, I find that the incidents between the parties have escalated to the extent that the landlord feels like that they have no choice but to apply for an early termination of this tenancy. Although I do not doubt that there is considerable background behind the behaviour of both parties, I find that the landlord has provided sufficient evidence to support that the tenant's behaviour has caused the landlord and their family to become extremely anxious and concerned for their well-being, impacting their ability to enjoy their home.

Although the tenant disputes this application, and that they were the harassing party, I find that the landlord has provided sufficient evidence which highlights the volatility the landlord and their family will face if this tenancy continues, and the potential risk to the landlord and their family's well being, lawful rights, and safety. I find that this is sufficiently supported by the tenant's own admission that they had turned off the gas in the home, which is an essential utility used by both parties. Even though the tenant claims that they had permission to do so, I do not find the tenant's testimony to be persuasive or convincing. The tenant did not provide any evidence, whether this is in the form of written evidence such as an affidavit, or witness testimony to corroborate their evidence that this was consensual.

Furthermore, despite the tenant's concerns about breach of their privacy by the landlord and other breaches of the *Act* and tenancy agreement, the tenant did not file any applications for dispute resolution. Instead, the tenant took it upon themselves to tamper

with the landlord's property, specifically the CCTV system, and the landlord's vehicle. This is supported in evidence where the tenant is shown to have painted over the camera with a paintbrush. Another video shows the tenant concealing themselves with an umbrella. The landlord also provided evidence showing how the tenant had vandalised the landlord's car by painting on the window, while the landlord's wife and six year old daughter was inside. I find that the tenant clearly has the intention to continue this behaviour, as evident by the fact that the tenant has not only refused to acknowledge the seriousness of their actions. In fact, I find the tenant feels justified as the tenant described what they considered to be harassment on part of the landlord. Although the tenant has multiple concerns about the landlord's breach of the Act and tenancy agreement, the tenant has not filed any applications for dispute resolution. Instead, I find the tenant has acted in a retaliatory and aggressive manner towards the landlord, and demonstrated by the events above.

In light of the evidence before me, I find the continuance of this tenancy would put the landlord and their family, as well as their property at significant risk. I am satisfied that the landlord has met the burden of proof to support that they will face the threat of further disturbance from the tenant if this tenancy was to continue. Under these circumstances, I find that it would be unreasonable and unfair for the landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. For these reasons, I find that the landlord has provided sufficient undisputed evidence to warrant ending this tenancy early. I issue a two day Order of Possession to the landlord.

As the landlord was successful in this application, I allow the landlord's application to recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the security deposit in satisfaction of this claim.

### **Conclusion**

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the \$100.00 filing fee by allowing the landlord to retain \$100.00 from the security deposit in satisfaction of this claim.

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: November 1, 2022