



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ET**

### Introduction

This expedited 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 56

The advocate OW attended with the landlord (“the landlord”). OW also provided affirmed testimony as a witness for the landlord. The landlord 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 31 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.

### *Service upon Tenant*

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

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution by posting to the tenant’s door on October 21, 2022, thereby effecting service 3 days later, on October 24, 2022.

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

In consideration of the landlord's evidence, I find the landlord served the tenant effective on October 24, 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 substantial testimony and supporting evidence. Not all this evidence is repeated or referenced in the Decision. Only selected, relevant and admissible evidence in support of my findings is referenced.

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The witness OW testified and corroborated the landlord's evidence.

The landlord testified the parties entered into a month-to-month verbal tenancy agreement starting April 1, 2020, for monthly rent of \$600.00. The unit is in a single-family residence and the landlord lives upstairs.

The landlord testified the behaviour of the tenant became unacceptable beginning in December 2021. The landlord believed the tenant's conduct became affected by a drug addiction. The tenant lost his employment and has not paid the landlord rent since February 2022.

The landlord testified the tenant became increasingly aggressive since that time and has threatened physical violence to the landlord on many occasions. The landlord called the police 7 times and submitted copies of the cards of three police officers who attended.

The tenant frequently "howls and screams" outside the building, usually between 10 pm and 4 am. He screams threats and insults at the landlord. The tenant has threatened the landlord, for example, by saying he would "bash your head in" and "piss in your skull" among other threats. The tenant plays music so loudly that neighbours several doors down have complained to the landlord. The threats involve tools to harm the landlord and the landlord testified he is increasingly concerned for his safety.

The landlord testified the tenant has smashed holes in the ceiling of the unit while banging on the ceiling and screaming threats at the landlord. The landlord submitted a written, signed statement from TP who confirmed the damage and the tenant's threatening and disturbing behaviour as testified by the landlord. The advocate and witness OW confirmed the landlord's testimony.

The landlord submitted several pages of a written statement setting out the details of the tenant's threatening and disturbing behaviour which he confirmed in his testimony.

The landlord submitted several audio files of the tenant's screaming and threatening which were served upon the tenant in compliance with the Act.

The landlord testified that the tenant's behaviour has intensified over time in terms of aggression and disturbance to him and neighbours. The tenant has been warned verbally, by text and by the attending police, many times. The landlord stated that the warnings had no effect on the tenant's behaviour which has continued to worsen.

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 of 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 (emphasis added):

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.

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 the first ground, that is, that the tenant has significantly interfered with or unreasonably disturbed people living in the building, ie: the landlord.

I find the cumulative effect of the tenant's actions to amount to significant interference and unreasonable disturbance. I accept the landlord's credible and supported evidence that the tenant has disturbed the landlord by screaming threats at him many times, by creating noise and disturbance, and by banging on and damaging the ceiling of the unit. I accept the evidence that the tenant's behaviour has resulted in the police attending the unit many times. I find the tenant has been warned by the landlord and the police many times to no avail.

I find the landlord provided credible testimony and sufficient supporting evidence from witnesses and audio recordings. 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 landlord and a risk of ongoing disturbance of a serious nature.

In summary, in considering the evidence and submissions, I find the landlord has met the burden of proof with respect to the first section:

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

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 threats, police involvement, the pattern of disruptive behavior over many months, and the nature of the violent threats.

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.

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: November 07, 2022

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Residential Tenancy Branch