



# 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 termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The landlord testified that he posted his application for dispute resolution and evidence on the tenant's door on January 6, 2022. The landlord entered into evidence a witnessed proof of service document stating same. The tenant testified that he received

the above package. I find that the tenant was served with the above documents in accordance with sections 88 and 89 of the *Act*.

The tenant testified that the dispute resolution package stated that a tenancy agreement was included in the evidence, but he was not served with one.

Rule 10.2 of the Residential Tenancy Branch Rules of Procedure states:

An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.

I exclude the tenancy agreement entered into evidence by the landlord because it was not served on the tenant in accordance with Rule 10.2.

Rule 10.4 of the Residential Tenancy Branch Rules of Procedure states:

Copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence must be served on the other party in a single complete package.

The tenant testified that most of the evidence submitted to the residential tenancy branch was not served on the landlord. I find that all evidence not served on the landlord in accordance with Rule 10.4 is excluded from consideration.

Both parties agree that the tenant served the landlord with pictures of the landlord going through the tenant's kitchen and corridor. The landlord testified that he also received a letter from the tenant. I accept for consideration the photographs and the letter dated January 23, 2022.

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on August 11, 2021 and is currently ongoing. Monthly rent in the amount of \$1,875.00 is payable on the first day of each month. The subject rental building is a house with an upper and a lower suite. The landlord lives in the upper suite and the tenant lives in the lower suite.

The landlord testified that on January 4, 2023 he attended the subject rental property and personally served the tenant with a demand to pay utilities. The landlord testified that when he served the tenant, the tenant physically assaulted him and kicked him seven times. The landlord testified that he called the police who attended and arrested the tenant for assault. The landlord testified that assault charges have been laid against the tenant and that the tenant has a court date pertaining to those charges on February 22, 2023. The landlord entered into evidence photographs of abrasions to his wrist, forearm and elbow which he testified were the result of the above-described assault.

The tenant testified that the landlord is an evil liar. The tenant testified that the January 4, 2023 incident was totally planned by the landlord. The tenant testified that on January 4, 2023 the landlord asked him to come to the door so that the landlord could serve him with a document. The tenant testified that he asked the landlord to leave the documents at the door but the landlord insisted the tenant open the door to receive them.

The tenant testified that he opened the door, and the landlord handed him a demand to pay utilities. The tenant testified that the landlord was intentionally overcharging him for utilities. The tenant testified that after he took the demand letter he saw that the landlord was recording him on his phone. The tenant testified that he asked the landlord to stop recording him but the landlord did not stop recording. The tenant testified that he tried to block the landlord's phone camera and that when he did so, the landlord hit him with his phone. The tenant testified that he then had to kick the landlord and take his phone because he was still recording. The tenant testified that he was defending himself.

The tenant testified that the landlord cheated the police and pretended to be very sad and afraid. The tenant testified that the police believed the landlord because the landlord had worse wounds than he did. The tenant testified that he had wounds but they were not as bad as the landlord's because the landlord was wearing a t shirt and he was wearing thick clothing. No documentary evidence of injuries were submitted by the tenant.

The tenant did not dispute that he was charged with assault and confirmed in his written submissions that he has a court date on February 22, 2023. The written submissions of

the tenant, found in the letter date January 23, 2023, primarily focus on a litany of complaints against the landlord that are not relevant to this hearing. The portion of the January 23, 2023 letter pertaining to the January 4, 2023 incident states:

As a revenge to I questioned [the landlord's] unreasonable Electric Heating bill, [the landlord] has been playing old Chinese Tricks in Canada. He has been cheating [redacted] policemen and police woman about Jan.4,2023 incident successfully. Whether [landlord] is a real or fake victim, the fact and truth will be absolutely completely revealed in court after Feb. 22, 2023. I believe in Justice in Canada. I believe Justice will finally defeat old Chinese Tricks.

The landlord entered into evidence stills of the recording made on January 4, 2023 in which the tenant's leg can be seen raised up in a kicking position.

The tenant testified that since the January 4, 2023 incident, the landlord asked the tenant for permission to enter the subject rental property. The tenant testified that he granted access as requested. The tenant entered into evidence photographs of the landlord in the corridor and kitchen of the subject rental property. The tenant testified that the landlord's presence in the subject rental property proves that the landlord is not afraid of him.

The landlord did not dispute entering the suite. The landlord testified that the tenant, who has already attacked him once, is a threat to himself and his security. The landlord testified that the tenant cannot control his emotions and may attack again.

### 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 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, 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.*

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

The tenant testified that after he saw that the landlord was recording him, he attempted to block the phone camera and that this is when the landlord struck him. I do not find this scenario to be likely. I accept that the landlord was recording the January 4, 2023 encounter, and that the tenant did not approve of the recording, but I find it unlikely that in blocking the landlord's camera, the tenant did not make contact with the landlord or the landlord's phone.

I find that the tenant could have simply returned to the subject rental property and closed the door, but instead elected to attempt to stop the landlord from recording. I find it more likely than not that the tenant physically attempted to stop the landlord from recording and, at the time of the January 4, 2023 encounter, and was angry for an alleged injustice regarding utility payments.

I find that the tenant's testimony that he blocked the landlord's phone without touching the landlord not to be credible. Based on the testimony of both parties and the photographs of the physical injuries suffered by the landlord, I find, on a balance of probabilities, that the tenant assaulted the landlord and was the instigator of the physical confrontation.

The tenant testified that after the landlord struck him with the phone, he had to kick the landlord and take his phone because the landlord was still recording. I find that the tenant did not “have to” kick the landlord and take his phone. The tenant could have returned to his unit and was not forced to kick the landlord but elected to do so. The fact that the landlord was recording the tenant did not give the tenant authority to kick the landlord.

I find that in hitting and kicking the landlord, the tenant seriously jeopardized the health, safety and lawful right and interests of the landlord. I find that the landlord has the right not to be kicked or hit.

I find that while the landlord has, with permission, entered the suite of the subject rental property, does not mean that the landlord is not concerned for his safety and well being. I accept the landlord’s testimony that after being assaulted by the tenant he is concerned for his safety.

Given the physical assault against the landlord and the hostility evident in the hearing between the parties, I find that it would be unreasonable and unfair for the landlord to wait for a notice to end tenancy under section 47 of the *Act* to take effect as it is not reasonable to live with the threat of violence or to live next to someone who has hit and kicked you. Pursuant to section 56 of the *Act*, I award the landlord a two-day Order of Possession.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 56 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 26, 2023

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Residential Tenancy Branch