



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION  
and [Tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code: ET

### Introduction

The Landlord seeks orders under section 56 of the *Residential Tenancy Act* (the “Act”).

### Preliminary Issue: Service of Notice and Evidence

The Tenant’s advocate explained that a written submission was uploaded to the Branch’s online Dispute Management System. However, in my reviewing this file, nothing other than an authorization from the Tenant for the advocate to act on their behalf was submitted. It is possible, noted the advocate, that the written submission was submitted on another file (see other file number referenced on the cover page of this decision). The Landlord’s representative said that the Landlord has not received any written submission from the Tenant or her advocate.

The Landlord’s representative (A.P.) testified that the Landlord served both the Notice of Dispute Resolution Proceeding and a copy of their evidence on the Tenant by posting the materials on the door of the rental unit on February 10, 2023. The Tenant admitted that she had received this material; the Tenant’s advocate explained that she did not have this material. It is my finding, based on the Landlord representative’s and the Tenant’s testimony that the Tenant was served with the Notice of Dispute Resolution Proceeding and the Landlord’s evidence in accordance with the Act and the Rules of Procedure.

### Issue

Is the Landlord entitled to orders under section 56 of the Act?

### Background and Evidence

In reaching this decision, I have considered all of the parties’ evidence and submissions, but I only refer to what is necessary to explain my decision.

The Landlord's representatives (both S.A. and A.P., hereafter the "Landlord" for brevity) testified that the Landlord seeks to end the tenancy early because of the Tenant's various activities and conduct. Namely, this includes the possession of drugs for the purposes of trafficking, drug trafficking, permitting frequent visitors into and out of the rental unit which have caused excessive disturbances, permitting individuals into the building, and giving them key access fobs and generally creating a risk to everyone in the 200-plus rental unit building. The Landlord testified that there are upwards of 30 to 40 visitors a day coming and going from the rental unit.

The Landlord testified that the RCMP drug squad executed a search warrant in early January 2023 and apparently seized items that pose a public safety risk.

One of the Landlord's representatives testified that he went to conduct an inspection of the rental unit. The Tenant was not present, but a number of other people were. And there was a 100-plus pound grey pit bull without a muzzle or leash in the rental unit. Some of the people lunged at the representative and he quickly exited the rental unit. He also noted that the pit bull has been running freely around the building without its owner and without a leash or muzzle.

The Landlord submitted several documents into evidence, including a copy of the search warrant and additional email communication. I refer to this documentary evidence later in this decision.

The Tenant's advocate argued that there is a personal history between the Landlord's representative A.P. and the Tenant, and that this likely forms a basis on which this matter was initiated. The advocate noted that the Tenant acknowledges that some of her behavior needs to be corrected and worked on, but that otherwise the Landlord is making the Tenant the building's scapegoat. The advocate argued that the Landlord is accusing the Tenant of some fairly serious claims without much detail to back up those allegations.

The advocate further argued that while there was a search warrant, no criminal charges have (yet) resulted. Crown counsel has not yet made any charges, and the police "didn't find anything" as a result of the executed search warrant. At the end of the day, the Tenant is being held responsible for the building's ills and is being evicted on "trumped up charges."

The Landlord briefly responded by stating that the Landlord does not penalize tenants who are disadvantaged or who have addiction issues.

## Analysis

The Landlord's application is made under section 56(1) of the Act, which states that

A landlord may make an application for dispute resolution requesting

- (a) an order 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) an order granting the landlord possession of the rental unit.

In order to grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied, on a balance of probabilities, that

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.

In this case, the primary evidence upon which the Landlord seeks to end the tenancy early under section 56 of the Act is the search warrant and the circumstances surrounding that search. All other circumstances upon which the Landlord seeks to end this tenancy relate to conduct that occurred in 2021 and 2022.

Circumstances include noise issues, dog urine, inappropriate conduct, and are outlined in various warning letters. Because these various events date back to more than year, however, I do not find that they rise to the level warranting an application to end the tenancy early on an urgent basis. They have, however, appeared to have led to the Landlord issuing a One Month Notice to End Tenancy for Cause.

Which leaves the search warrant: a search warrant in and of itself is not proof that the Tenant has engaged in an illegal activity. Having myself been a former Crown prosecutor, it is not at all lost on me that there is a significant difference between searching and arresting someone to charging and convicting that person.

In this case, after a search warrant was executed on January 13, 2023, the RCMP constable remarked in his email of the same date that he “would be able to provide more details once charges are approved, which can take months.” While the Tenant and two other people were arrested, no charges appear to have been laid as of the date of this hearing. The RCMP investigation which appears to have led to the issuing of the search warrant began in late November 2022.

In respect of the search, the RCMP constable said that “We seized items that we believe would pose a public safety risk.” but he did not elaborate on what those items were. The Landlord testified that the items included “drugs, cash, and weapons,” but there is no documentary or corroborating evidence that these were the items.

In summary, I do not find that the search, the search warrant, or the email communication from the RCMP persuades me to find that the Tenant engaged in illegal activity contemplated by subsection 56(2)(a)(iv) of the Act. And, while the Tenant may have engaged in other activities covered by other subsections within section 56(2), these events are rather dated and do not, I find, give rise to a situation where it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end the tenancy under section 47 to take effect. Which, it would appear, is what has happened.

The circumstances leading the Landlord to issue a One Month Notice to End Tenancy for Cause will, of course, be addressed during the arbitration hearing scheduled for May 19, 2023 at 11:00 AM.

Taking into careful consideration all of the evidence before me, it is my finding that the Landlord has not, on a balance of probabilities, proven their application for orders under section 56 of the Act. Accordingly, the Landlord’s application must be dismissed without leave to reapply.

Conclusion

**The 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 Act.

Dated: March 3, 2023

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Residential Tenancy Branch