

DECISION

Dispute Codes **CNC, RP**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to carry out repairs pursuant to section 32;

The tenant attended with the advocate CD (“the tenant”). The agent MT and the agent/building manager TJ attended on behalf of the landlord (“the landlord”).

All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. No issues of service were raised. I find the landlord served the tenant as required under the Act. I find the tenant served the landlord as required under the Act.

Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

Service

No issues of service were raised.

I find each party served the other in compliance with the Act.

Preliminary Issues are addressed:

1. Granting Order of Possession
2. Severance of claims
3. Settlement discussions

1. Preliminary Issue - Granting Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The landlord requested an Order of Possession on two days notice.

2. Preliminary Issue – Severance

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for the application to dispute the landlord's Notice are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

3. Preliminary Issue - Settlement Discussions

I explained the hearing and settlement processes more than once, and the potential outcomes and consequences, to both parties. Both parties had several opportunities to ask questions, which I answered.

Neither party made any adjournment or accommodation requests. I informed them I make my Decision after the hearing and not during the hearing. I informed the tenant of the possible consequences of this hearing.

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I assisted the parties in efforts to settle the matter.

Settlement discussions were unsuccessful, and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the One Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

Background of Tenancy

A copy of the tenancy agreement was submitted.

The parties agreed on the background of the tenancy as follows:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	Yes Addendum – crime free housing dated May 18, 2007
Type of Tenancy	Month-to-month
Beginning Date	July 1, 2007
Rent payable on first of month	\$505.00
Security deposit	\$430.00
Arrears of Rent	no

One Month Notice

The parties agreed the landlord issued and served a One Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	February 1, 2023
Effective Date of Notice	March 31, 2023
Date and Method of Service	In person, acknowledged by tenant
Effective Date of Service	February 1, 2023
Reasons for Issuance	Significantly interfered, seriously jeopardized, significant risk, illegal activity, breach material term
Application for Dispute Resolution filed - date	February 7, 2023

The reasons for issuance of the One Month Notice are:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord. put the landlord's property at significant risk.
 - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord's Evidence

The landlord relied primarily on the first and second of the grounds above, that is:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

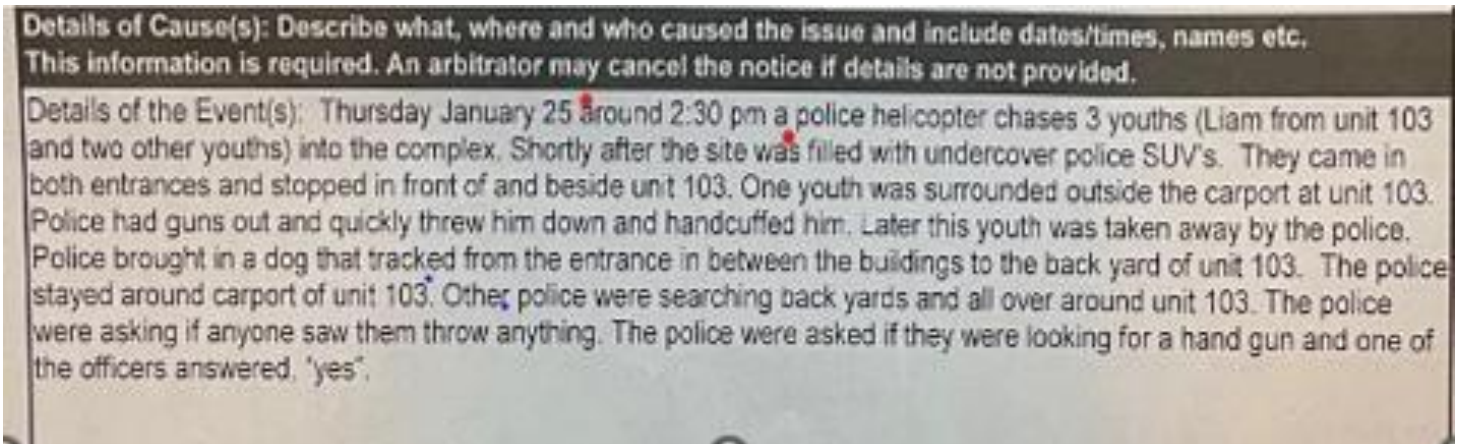
The landlord submitted a comprehensive evidence package including many letters of complaint, police incident report, landlord incident reports, photographs and correspondence with tenant.

A summary of key events to which the landlord testified follows:

1. The unit is in a building described as a “family complex” with 109 units and 175 kids under the age of 12.
2. The landlord has submitted many letters of warning to the tenant over the years which was acknowledged by the tenant.
3. The tenant has a 17-year-old son LP who lives with her in the unit as well as 20-year-old daughter.
4. The actions of the tenant’s son LP and the inability or unwillingness of the tenant to control his behaviour, are the reasons for this application. The landlord alleged:
 1. LP has been involved in criminal activity because of which he is, or has been, on probation.
 2. LP hangs out with other young people engaged in similar behaviour
 3. LP disturbs the residents of the building who are afraid of LP and his friends.

4. LP enters other units/carports without permission as seen on surveillance camera.
 5. LP presents danger to other occupants by gang connection resulting in his being shot at while in the unit thereby creating a danger to other residents
 6. LP participates in delinquent group drinking and vandalism at the complex, most recently on February 21, 2023.
 7. LP increasingly presents danger to health and safety of residents.
 8. LP's behaviour in its totality has created a situation of urgency and he must leave as soon as possible to prevent harm and violence.
 9. LP's actions seriously jeopardized the health or safety or a lawful right or interest of building occupants who have a reasonable fear of harm.
5. Many times, LP has run from the police who attend at the building looking for him.
6. The landlord described three recent incidents in detail. The first occurred on December 16, 2022, when several shots (estimated at 11) were discharged from a gun outside the tenant's unit. The intended target was LP. No one was injured. The police attended, cordoned off an area, and conducted a search for the gun.
7. A submitted witness statement stated:
- On December 16 [2022] our house was behind police tape for 14 hours due to someone shooting 11 shots right underneath my grandson's bedroom window that was intended for the [tenant's unit] some kid named [LP, tenant's son]. On couple of occasions he has been seen climbing thru yards and over fences to avoid the police.
8. The second incident occurred January 25, 2023 and involved a police chaise of the tenant and others, a police helicopter over the complex, arrest and handcuffing of an acquaintance of LP's outside the unit, and the

attendance at building of armed police with guns drawn. The landlord stated in the One Month Notice:



9. A submitted witness statement stated:

On December 16, 2022, I observed [LP] and another guy cutting through the yard [at the building in which the unit is located] to get away from police again. As they split up one was taken down at gunpoint outside 103. [LP] went the other way. I do not believe he was caught. This is crazy. Something needs to be done with [the tenant's unit] before something else happens.

10. The landlord submitted a copy of a letter to the tenant dated February 1, 2016 in which a resident described anxiety and fear associated with the December 16, 2022 and January 25, 2023 incidents:

.... [I am] very concerned and frightened.... I witnessed a helicopter above the complex, many police officers and dogs throughout the area. I was walking my dog, noticed and photographed 2 officers outside [the unit] with a person in handcuffs on the ground.

The officers went through my garbage can, recycle bin and organics container looking for a gun.

I often see police vehicle at [the unit].

11. The third incident occurred after the One Month Notice was issued on February 1, 2023. The witness TJ, the building superintendent, testified to an incident on February 21, 2023 in which LP was present when a group of people outside the complex were drinking and smashing bottles. One of the people backed a car into a tree. LP tried to leave with the group.
12. The witness TJ stated he is concerned about his safety and did not want to confront the group that day as they were “all drunk” and “because of the recent shooting and gun calls”.
13. The witness TJ submitted a written statement describing the event stating:

I called [the tenant] to get the kids [and LP] to leave before the little kids started walking to school. [the tenant] came out and looked like she told them to leave.

After the kids left [the tenant] called and explained they were [KP's] friends who came by they were all drunk. Even tho [LP] got in the car to leave with them she said he was trying to get them to leave.”
14. The landlord submitted a copy of the tenant's web page for fund raising in which she acknowledges that LP has a probation officer.

Tenant's Evidence

The tenant testified as follows regarding the landlord's main allegations.

1. LP is 17, her son, and lives with her. He has mental and learning challenges, although the tenant did not submit any medical or similar evidence. He attends a school.
2. LP inappropriately chooses other young people to hang out with, but he does not engage in any criminal activity and has no criminal record.

3. To illustrate LP's lack of culpability, the tenant submitted the following sworn statement from LP who was not called as a witness:

With respect to the two police incidences on the dates of December 16, 2022 and January 25, 2023, I had no part, involvement or knowledge of either of the events/incidences that happened outside of our townhome on those dates.

Furthermore, at no time have the police spoken to, questioned or detained me in any way, or given me a file number with respect to these two incidences.

4. The tenant testified and submitted written statements stating the notice is issued because of prejudice against her son who she acknowledged has "behavioral issues". He is a scapegoat.
5. While the tenant acknowledged shots were fired at the complex on December 16, 2022, the tenant stated her son was in his room and had nothing to do with the incident.

The police never questioned us and we were never given any file number, nor was it suggested that we were involved in any way in this incident.

I called the police after receiving the eviction notice to see if I could get the file number and find out if anyone from our house was listed on the file. The police told me that they were not able to confirm or deny who was involved in the shooting, because it was an ongoing and active investigation.

The statements made to metro Vancouver housing corporation are not accurate and they are hearsay. The tenants look at my son with prejudice because when he was younger he was a handful because of his mental illnesses, which include trauma, ADHD and ODD

6. The tenant claimed her son was not involved in the January 25, 2023 incident, as he had just returned from school and was in his room:

Again, the statements given regarding this issue are inaccurate, as Liam was in his room with his 2 school friends. While we do know the two boys that were apparently tracked into the complex and cornered at our house, we had nothing to do with this! These two individuals are not welcome at my home, and were not expected that day! Unfortunately we have no control over who physically comes into our complex, and it was a pure coincidence that they were cornered in front of our home.

The incidences have made me (and the kids) feel unsafe in my home and targeted by other tenants and MVHC, which is why I had previously looked into a transfer to a different complex for my family.

7. The tenant stated her son's only involvement in the February 21, 2023 incident was to try to encourage the others to leave. The tenant acknowledged drinking acquaintances came to the unit and LP went with them.
8. LP has done nothing wrong; he is unfairly being lumped in with bad behaviour of his acquaintances. The tenant is powerless to control visitors to the building.

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.

Credibility

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth.

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony and reasonable conclusions supported by well-organized and complete documentary evidence. The testimony regarding the reasons for issuance of the Notice and the request for early termination of the tenancy were supported in all material aspects by documentary evidence.

I find the landlord's evidence to be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I acknowledge that the tenant disagreed with much of the landlord's evidence, particularly the basis for the One Month Notice and the landlord's underlying motivation.

However, I do not find the tenant's submissions to be persuasive. I find the suggestion that the landlord is being untruthful or exaggerating to be unsupported by the evidence. I reject the tenant's claim that the One Month Notice was issued because of prejudice or discrimination of any kind. I find the tenant's assertions that her son LP has not participated in the events described to be disingenuous and unlikely. I conclude the tenant's denial of her son's culpability not to be in keeping with a common-sense interpretation of events.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. I give little weight to the tenant's evidence. For these reasons, where the evidence of the parties' conflict, I prefer the landlord's version.

Early End of Tenancy

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 if 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) that is, the tenant or a person permitted on the residential property by the tenant (namely, her son LP) 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;

I find the landlord provided credible testimony and sufficient supporting evidence from the witnesses' statements and the testimony of TJ, the building manager. I find the landlord has met the burden of proof 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 established the tenant's son LP was involved in behaviour with two others on January 25, 2023 which resulted in LP being pursued by the police in a helicopter and police vehicles to the unit to the alarm and fear of many occupants. I accept the evidence of TJ that he is afraid of being shot by LP or his friends because of past gun use at the building linked with LP. I find the police have attended at the unit on many occasions for the to see LP who has escaped by running away . I find the behaviour of LP on February 23, 2023 to which TJ testified indicated an ongoing voluntary participation by him in disruptive behaviour frightening to the families in the building. I do not accept the tenant's claims that LP attended the group who were drinking, driving and engaging in damage to the complex, with the sole purpose of dispersing the group.

I find the landlord has shown that there is a reasonable risk of danger or harm to the other occupants by the tenant's behaviour and a risk of ongoing disturbance of a serious nature.

I find the landlord has shown by the submission of several warning letters, receipt of which the tenant acknowledged, that LP's behaviour did not improve.

After considering the Act, hearing the testimony and reviewing the evidence, I find the landlord has established that the cumulative effect of the actions of the tenant's son LP, being a person permitted on the property by the tenant, have significantly interfered with or unreasonably disturbed occupants of the building. I find the tenant's son, LP, has committed serious breaches and he presents an imminent danger an imminent danger to the health, safety, or security of a landlord. As such, I conclude that the landlord has established, on a balance of probabilities, cause for ending the tenancy under section 47(1)(d)(i) and (II).

I find the landlord has established that it is unreasonable or unfair to wait for the landlord to wait for a hearing on the One Month Notice to End Tenancy for Cause in view of the threats, police involvement, the pattern of increasingly disruptive behavior over many months, and the reasonable fear of danger and violence to the many occupants of the building. The February 21, 2023 incident occurred after this Application for Dispute Resolution was filed which indicates to me that LP's behaviour continues unabated to terrify residents of the complex.

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.

Residential Tenancy Policy Guideline 54, Ending a Tenancy: Orders of Possession states:

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received¹. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - o e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - o e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

The parties discussed a date for the Order of Possession should one be granted. The tenant asked for several weeks to vacate.

In view of all circumstances and the evidence, I grant the Order of Possession effective March 31, 2023.

Conclusion

I grant an Order of Possession pursuant to section 56 (Early End of Tenancy) to the landlord effective March 31, 2023.

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: March 16, 2023

Residential Tenancy Branch