



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for an early end to the tenancy as it would be unreasonable or unfair to the landlords or other occupants to wait for a One-month Notice to End Tenancy for Cause [the 'One-month Notice'] to take effect.

The landlords appeared at the hearing on 2 May 2023 by way of agents. The tenants failed to appear.

### Preliminary Matter

I proceeded with this hearing in the absence of the tenants. This is why I did so.

The landlords provided testimony that they served the notice of this hearing on the tenants by posting it on 20 April on the door of the rental unit at which the tenants reside. The landlords supported this testimony with the statement of a witness who observed the landlords post the notice on the door.

Rule 7.3 of the RTBs Rules of Procedure reads:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Relying upon this rule, and satisfied by the submissions of the landlords that the tenants had been properly served with notice of this hearing, I decided to conduct the hearing in the absence of the tenants.

### Issue to be Decided

Should the tenancy end early?

### Background and Evidence

The landlords gave evidence of a particular incident. This incident occurred between about 0100 and 0200 hours on 20 March 2023 at the rental property [the 'Incident']. It involved the tenants and a man with whom the landlords say the tenants have a relationship [the 'Partner']. This Partner spends much of his time staying with the tenants in the rental unit, said the landlords.

The Incident had several stages, and involved several separate interactions between, on the one hand, the tenants and their Partner, and, on the other hand, the landlords' staff at the rental property [the 'Staff'] and other occupants of that property. In summary, this is what the landlords told me about the Incident that night.

- The tenants told Staff that they were going out, and if their Partner came by, to ask him to call them.
- Later, the Partner did come by and demanded access to the tenants' rental unit.
- The Staff denied the Partner access, as the tenants were not present.
- The Partner then became angry, and shouted at the Staff, using foul language that included repeated racial slurs pertaining to the colour or ethnicity of the Staff; referring to the Staff as 'slaves' because of their colour or ethnicity; and threatening to kill them and their families.
- The Staff, in fear of the Partner, contacted the landlords (at 0108 hours). And the Staff and or other occupants who heard this tirade also contacted the police.
- In the meantime, the tenants returned to the property with their Partner. The tenants then also engaged in a tirade comparable to that of their Partner. And together they went upstairs.
- Shortly afterward, one Staff member went upstairs to let another occupant into her unit. On doing so, the tenants and their Partner appeared and confronted the

Staff member: they cornered her in the hallway, and shouted at her and threatened her.

- The Partner then left, fearing arrest by police.
- The landlords then arrived (about 0115 hours) and spoke with the Staff.
- The Partner then returned (about 0130 hours) and again demanded entry.
- The landlords refused him entry, and so the Partner erupted into another tirade, banging on the door to the property, and this time threatening to pepper spray and kill the Staff and landlords. The Partner so frightened the landlords that they lost control of their bladder.
- The landlords again contacted the police.
- The police returned and eventually arrested the Partner (about 0145 hours). They also went upstairs and spoke with the tenants.
- The landlords, too, went upstairs and spoke with the tenants about this Incident, but the tenants denied that the Incident happened, and that, if the landlords attempted to evict the tenants, they would take the landlords' job and kill them.

The landlords hoped that the police would charge the tenants and their Partner. While waiting for this to occur, they began to compile statements from the Staff and other occupants. And they began drafting this application. After they compiled the statements, and drafted the application, their director reviewed these materials. And then, finally, on 14 April, the landlords filed their application.

### Analysis

I have considered all the evidence proffered by the landlords. And I have considered all the arguments made by the landlords.

The landlords argued that the tenants and their Partner:

1. significantly interfered with, or unreasonably disturbed, another occupant and of the landlords; and
2. seriously jeopardized the health or safety of the landlords and of another occupant.

I accept at least part of this argument: I accept that, based on the evidence of the landlords, the tenants and their Partner unreasonably disturbed the landlords and another occupant. I will describe why I accept this argument.

The evidence of the Incident is that it was clearly a disturbance. Consider that:

- the tenants and their Partner were shouting in the building in the middle of the night, and the Partner was banging on the door to the building;
- this shouting included threats of violence against Staff, the landlords, and their families;
- these threats included multiple references to the colour and or ethnicity of the Staff;
- the shouting and threats alarmed the Staff to such a degree that they felt they needed to contact the landlords, despite the late hour;
- the shouting and threats also alarmed other occupants of the building;
- the tenants and their Partner also, by their actions of cornering and shouting at one of the Staff, threatened to apply force to that Staff person, or otherwise reasonably caused that person to believe that the tenants and their Partner were able to do so;
- the shouting and threats also caused the landlords to call the police; and
- the police arrested the Partner as a result of these shouting and threats.

And, clearly, this was an *unreasonable* disturbance. If one needed clarification as to how such a disturbance is unreasonable, one could consider the following definition of 'unreasonable': irrational, foolish, absurd, silly, preposterous, senseless, stupid [see paragraph 38 of a decision by the Supreme Court of British Columbia: *Toronto-Dominion Bank v. MacKenzie Apartments Inc*, 2002 BCSC 636 (CanLII)].

One could use all of these words to describe the Incident.

Though not argued by the landlords, I also find that this conduct rose to the level (or, rather, sank to the depths) of illegal (indeed, criminal) activity that adversely affected the quiet enjoyment, security, safety or physical well-being of others occupying the building that night [consider section 56 (2) (iv) of the Act; as well as sections 264.1 and 265 (1) (b) of the *Criminal Code* (R.S.C, 1985, c. C-46)].

Having found that the tenants and their Partner did such things, I must now ask whether it be unreasonable or unfair to the landlords or other occupants to wait for a One-month Notice to take effect?

In answering this question, I firstly take notice of the fact that applying to the RTB to end a tenancy based on a One-month Notice would normally consume several months between (a) the time such a notice was issued and (b) a hearing were convened to hear an application based on that notice. This fact is so generally accepted as not to be debated among reasonable persons.

While the landlords delayed 25 days before making their application, they did so in order to gather documentation in support of their application, including, potentially, the outcome of the police investigation into this Incident. Had the Incident not involved the kind of criminal conduct that it did, such a delay by the landlords could very well be fatal to their argument that this application should be expedited. But considering:

- the egregious and criminal nature of the Incident; and
- the delay that would occur if the landlords now had to issue a One-month Notice

I am satisfied that it would be unfair to the other occupants and to the landlords' Staff to wait further.

I rule that this tenancy should end.

### Conclusion

Accordingly, I make an Order of Possession in favour of the landlords. This order is effective two days after they serve it upon the tenants.

If the tenants, their Partner, or any other occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 2 May 2023

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Residential Tenancy Branch