



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56.

The tenant did not attend this hearing. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 15 minutes from 9:30 a.m. to 9:45 a.m. The landlord's agent called in late at 9:32 a.m. I confirmed that the correct call-in number and participant code were provided in the notice of hearing. I also confirmed from the online teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed the names and spelling for her and the tenant. She provided the name of the landlord company ("landlord") named in this application. She provided her email address for me to send a copy of this decision to the landlord after the hearing.

The landlord's agent confirmed that the landlord owns the rental unit. She said that she is employed by the landlord as a program manager. She confirmed that she had permission to represent the landlord. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this

hearing, the landlord's agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions, which I answered. She confirmed that she was ready to proceed with this hearing. She did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on May 1, 2023, and a notice of hearing was issued by the RTB on the same date. The landlord was required to serve that notice, the application, and all other required evidence to the tenant within one day, by May 2, 2023, as per the RTB email sent to the landlord on May 1, 2023, and as noted on the RTB online dispute access site and Rule 10 of the RTB *Rules*.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on May 1, 2023, by way of posting to the tenant's rental unit door, where the tenant is still residing. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on May 4, 2023, three days after its posting.

### Issues to be Decided

Is the landlord entitled to an early end to tenancy and an Order of Possession?

### Background and Evidence

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

The landlord's agent testified regarding the following facts. This tenancy began on October 1, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$375.00 is payable on the first day of each month. A security deposit of \$187.50 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. A critical incident report was provided by the landlord from April 29, 2023. At 10:00 a.m., the landlord's staff member walked by and saw a bungee cord attached to the unit next door and a storage closet. The unit is next door to the tenant's rental unit. The landlord's staff member instructed the tenant to remove the bungee cord, which he did, but he did not say what happened. The landlord submitted videos showing that at 8:00 a.m., the tenant attached a bungee cord to his neighbor's unit. The tenant can be seen removing the fire extinguisher and discharging it through the peephole in the neighboring unit, while he held it closed with a bungee cord. The landlord provided photographs showing the fire extinguisher powder all over the neighbouring unit, that occupant had to be relocated for safety temporarily overnight, that unit had to be professionally cleaned by the landlord, it was toxic powder, and that occupant had to move back in because there are no other units to relocate him. The landlord provided 4 videos showing what happened. At 8:00 a.m., the bungee cord was attached, the fire extinguisher was discharged, and it was close to over an hour before the landlord's staff member noticed at 10:00 a.m., and the occupant was trapped inside.

The landlord's agent testified regarding the following facts. The tenant was sent a breach letter as a written warning by the landlord on May 1, 2023, which was attached to his door, asking him to refrain from violence. The landlord provided a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant, which is dated May 1, 2023, and effective May 31, 2023. It was served to the tenant by posting to his door on May 1, 2023. The notice was issued for the following 2 reasons: *"significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and; seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant."* The landlord cannot wait for the 1 Month Notice to take effect because this is an incident of violence and the tenant was unapologetic and denies this behavior.

### Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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...*

Residential Tenancy Policy Guideline 51 states the following, in part:

## **B. EXPEDITED HEARINGS**

*... These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant...*

*...*

## **C. TYPES OF EXPEDITED HEARINGS**

### *Early End of Tenancy*

*Under section 56 of the RTA and section 49 of the MHPTA, a landlord may apply to end a tenancy early and obtain an order of possession if 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 to take effect under section 47 the RTA or section 40 of the MHPTA [landlord's notice: cause], and a tenant or their guest has:*

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or manufactured home park;*

- *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity (see Policy Guideline 32: Illegal Activities) that:*
  - *has caused or is likely to cause damage to the landlord's property,*
  - *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 manufactured home park,*
  - *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or*
- *caused extraordinary damage to the residential property or manufactured home park.*

*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.*

On a balance of probabilities and for the reasons stated below, I find that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property.

The tenant did not appear at this hearing to provide affirmed testimony and the tenant did not submit any documentary evidence for this hearing, although he was deemed served with the landlord's application, as noted above.

I accept the affirmed, undisputed testimony of the landlord's agent at this hearing and the undisputed documentary and digital evidence submitted by the landlord. The tenant did not dispute the authenticity or contents of the landlord's evidence.

I find that the tenant engaged in dangerous, aggressive, and unsafe behaviour by trapping another occupant in his unit, while the tenant discharged fire extinguishers that are toxic, causing harm, injury, and damage to the other occupant and the neighbouring unit, on April 29, 2023.

The landlord provided 4 photographs, 4 videos, a breach notice, and a critical incident report, regarding the incident involving the tenant on April 29, 2023. The above evidence documents and confirms the above testimony provided by the landlord's agent at this hearing.

The photographs show the condition of the rental unit, including a white powdery substance all over the walls, floors, and the entire neighbouring unit. It shows cluttered and scattered items all over the unit, filled with tables, chairs, a bed, and other furniture. The videos show the tenant holding the door of the neighbouring unit closed with a bungee cord and discharging fire extinguishers through the peephole of the unit.

The breach notice, dated May 1, 2023, and issued to the tenant states the following, in part, on page 1:

*"This is a written warning for breach of the Good Neighbor Agreement and Guidelines for Living in a Safe and Secure Single Room Accommodation Hotel which are addendums to the Residential Tenancy Agreement you signed.*

*'The tenant (s), any occupant of the tenant (s) household, and any persons affiliated with the tenant or invited onto the residential property or residential premises by the tenant (s) or any occupant or member of the tenant's household shall not engage in any criminal activity on the premises or property including, but not limited to:*

- (a) any drug-related criminal activity;*
- (b) solicitation (sex trade workers and related nuisance activity);*
- (c) street gang activity;*
- (d) assault or threatened assault;***
- (e) unlawful use of a firearm;*
- (f) any criminal activity that threatens the health, safety or welfare of the landlord, other tenants or persons on the residential property or the residential premises.***

***VIOLATION OF THE ABOVE PROVISIONS, WHICH FORM A REASONABLE, AGREED UPON, AND MATERIAL TERM OF THE RESIDENTIAL TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END A TENANCY.'***

*On April 29<sup>th</sup>, 2023 you caused a disturbance in the building. You were observed on camera trapping a tenant inside of their unit using a bungee cord you attached to their door, then, proceeded to empty 2 fire extinguishers inside of their unit via the peep hole in their door. This tenant was trapped inside of their unit for over an hour (8:44am-10:02am) until staff noticed the cord and fire extinguisher debris and only then did you remove the cord. Fire extinguisher powder can be dangerous to humans, as outlined by the National Capital Poison Centre - "Contact of these powders with the eyes, nose, throat, and skin can cause irritation. Deliberate inhalation or ingestion can cause serious symptoms such as pneumonia, seizures, irregular heartbeat, and kidney failure." Your actions were unacceptable and have caused discomfort in the building. Violence of any kind will not be tolerated. We are asking that you reframe from any forms of violence."*

The critical incident report, dated April 29, 2023, and completed by the landlord's staff member, states the following, in part, on page 1 (redacted where indicated for confidentiality):

*"At approximately 10:02am staff noticed a bungee cord tied from the outside handle of [neighbouring unit] to the storage closet and fire extinguisher powder all over the ground outside of [neighbouring unit] while on a building round. Staff spoke to [tenant] who was by his unit who removed the cord from [neighbouring unit] and began sweeping up the powder.*

*Upon reviewing camera footage -*

*At approximately 8:00am [tenant] was seen attaching a bungee cord from [neighbouring unit's] outer handle to [tenant's rental unit]. [Tenant] then looks inside of [neighbouring unit] through the peephole several times before moving the bungee cord from [neighbouring unit] to the 4th floor storage closet, trapping the tenant of [neighbouring unit] inside. [Tenant] then removes the fire extinguisher from its cabinet on the 4th floor*

*and sprays it through the peephole of [neighbouring unit]. [Tenant] leaves the bungee cord on [neighbouring unit] until staff notice it at 10:02.*

*...*

*Needed to relocate tenant in [neighbouring unit] temporarily to a new unit as fire extinguisher powder covered his unit floor, his furniture and his bed, which is a health hazard. Called in cleaning company to thoroughly clean [neighbouring unit].”*

I also find that the landlord’s application meets the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord provided sufficient evidence that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to take effect.

I find that the landlord provided sufficient documentary, digital, and testimonial evidence regarding the urgency and seriousness of this situation. I find that the tenant caused health and safety hazards for the landlord and other occupants at the residential property. I find that the April 29, 2023 incident was only resolved because the landlord’s staff member happened to walk by shortly after, and asked the tenant to stop his behaviour. I find that the tenant has not moved out of the rental unit. I find that the tenant has not responded to or disputed this application filed by the landlord on May 1, 2023, although he was deemed served with the landlord’s application, as noted above.

Although the landlord did not provide a copy of the 1 Month Notice that was issued to the tenant, I accept the undisputed testimony of the landlord’s agent, regarding its details and contents. As noted above, I found that the tenant significantly interfered with and unreasonably disturbed the landlord and other occupants at the residential property, which is one of the reasons indicated on the notice. I find that the tenant was deemed served with the notice on May 4, 2023, three days after its posting on May 1, 2023. This would correct the effective date to June 30, 2023, as per section 53 of the *Act*. I find that it would be unreasonable or unfair for the landlord to wait for this notice to take effect on June 30, 2023.

Accordingly, the landlord’s application for an early end to tenancy is allowed. The landlord is granted an order of possession effective two (2) days after service on the tenant.

### Conclusion

The landlord’s application is allowed. I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises 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: May 23, 2023

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Residential Tenancy Branch