



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application, filed on May 2, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an order of possession, pursuant to section 56; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing. The landlord's agent attended this 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 20 minutes from 1:30 p.m. to 1:50 p.m.

The landlord's "witness CM" was excluded from the outset, left the hearing at 1:31 p.m., returned later to testify, and left the hearing after her testimony was completed.

I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the online teleconference system that the landlord's agent, witness CM, and I were the only people who called into this teleconference.

The landlord's agent confirmed the names and spelling for her, the tenant, and 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 this hearing.

The landlord's agent said that the landlord owns the rental unit. She provided the rental unit address. She stated that she is employed by the landlord as a property manager. She claimed that she had permission to represent the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. During this hearing, the landlord's agent and witness CM both separately affirmed, under oath, that they 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 did not make any adjournment or accommodation requests. She affirmed that she was ready and prepared to proceed with this hearing.

#### Preliminary Issue – Unidentified Person in Hearing

Rule 7.6 of the RTB *Rules* states the following (emphasis in original):

***7.6 Identification of people present at a dispute resolution hearing***

*Each participant must identify all people who are present with them at the start and anyone who joins them at any time during a hearing.*

An unidentified caller joined the hearing at 1:36 p.m. I repeatedly asked this person to identify themselves, but they did not respond at all. I read aloud their phone number from the online teleconference system. I cautioned them that I would disconnect them from this hearing if they did not identify themselves. They did not respond or identify themselves, so I disconnected them from this hearing at 1:37 p.m. They did not return to this hearing after they were disconnected.

#### Preliminary Issue – Service of Documents

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlord filed this application on May 2, 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 in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord's agent stated that she served the tenant with the landlord's application for dispute resolution hearing package on May 3, 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. The landlord's agent confirmed that another landlord employee witnessed the posting and signed the proof of service. 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 6, 2023, three days after its posting, to the rental unit where the tenant is still residing.

### Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an order of possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent and witness CM 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 stated the following facts. This tenancy began on April 1, 2022. Monthly rent in the current amount of \$648.00 is payable on the first day of each month. A security deposit of \$314.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent testified regarding the following facts. There have been many complaints regarding the tenants. Many other tenants have come forward and are scared and afraid of the tenants and their associates. There is a vicious dog that has bitten numerous people. The girl who owns the dog lived in a different area and the landlord's agent called the owner to confirm that the dog was vicious. The dog owner is a homeless drug addict who was staying at a place without a tenancy agreement, only a service agreement. She was evicted because of a dog bite. Other tenants witnessed the whole scenario on April 30. The two were fighting in the hallway and the dog lunged at another tenant who is now afraid to leave the apartment. The other tenant called the landlord, the tenant was sitting in a chair of the hallway, he said that he read what she said, and she was scared and texted the landlord. The landlord offered to walk her to and from her apartment. Another tenant is afraid of being "blown up," is afraid of the dog, and the yelling and screaming of the tenant in her face. Other people have

complained regarding the guests. There are missing packages. The tenants and their guests are a threat. There are children and elderly neighbours who are afraid.

Witness CM testified regarding the following facts. She lives next door to the tenant in the same building. She moved in on September 1, 2021. She has heard the tenant fight a lot with his homeless girlfriend and the dog. She knows they are doing some type of drugs because it affects her health. It is unhealthy for her. The tenant got in her face a few times, he told her to “shut up,” and he was “mean,” so she is afraid. She has heard the dog barking, he growls, he lunges, and he is “mean.” She is an “elderly lady,” who does not need all this. She wants to live a peaceful life. This has been going on for about 8 months. She is afraid to leave the building and her apartment, and she feels unsafe from the tenant, his girlfriend, and her dog. The tenant is a “big bully and mean” to people. No pets or homeless people are allowed in the building. The tenant is “breaching all of the contracts.” He is doing all of the “wrong things.” She is stressed.

## Analysis

### Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present and prove this application, claims, and evidence. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide sufficient evidence of this application, in order to obtain an order of possession against the tenant.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord’s agent testified that she served this application package to the tenant, as noted above. The landlord received a four-page Notice of Dispute Resolution Proceeding, dated May 2, 2023 (“NODRP”) document from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

**The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.**

- **It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the**

**Residential Tenancy Branch website on submitting evidence at**  
**[www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit)**

- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. I informed the landlord's agent that I had 30 days to issue a written decision to both parties after this hearing. She affirmed her understanding of same.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of this application, since the landlord chose to file this application on its own accord.

The following RTB *Rules* are applicable and state the following, in part:

***7.4 Evidence must be presented***

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

***7.17 Presentation of evidence***

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

***7.18 Order of presentation***

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord's agent did not sufficiently present the landlord's claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 20 minutes. Only the landlord's agent attended this hearing, the tenant did not. I provided the landlord's agent with ample time during this hearing to present the landlord's application, submissions, and evidence.

### Findings

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the 30 days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) 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...*

The landlord's agent did not testify about which one of the above parts of section 56(a) of the *Act*, were relevant to this application.

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 landlord's application fails the second part of the test under section 56(2)(b) of the Act. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

I find that the landlord failed to provide sufficient testimonial and documentary evidence to prove this application, as per Residential Tenancy Policy Guideline 51. I find that the landlord failed to provide sufficient evidence to demonstrate the urgency of this situation or that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord's agent did not sufficiently review or explain the landlord's evidence submitted with this application. She did not reference or explain any of the documents. She did not point me to specific documents, page numbers, provisions, or other information, during this hearing.

The landlord did not submit a 1 Month Notice as evidence for this hearing. The landlord's agent did not testify as to whether a 1 Month Notice was issued to the tenant.



The landlord had ample time to provide sufficient evidence prior to this hearing, as this application was filed on May 2, 2023, and this hearing occurred on May 18, 2023.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an order of possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant. This claim is also dismissed without leave to reapply.

### Conclusion

The landlord's entire 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 *Residential Tenancy Act*.

Dated: May 18, 2023

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Residential Tenancy Branch