



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application, filed on April 20, 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 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 28 minutes from 9:30 a.m. to 9:58 a.m.

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 teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed his name and spelling. He provided his email address for me to send a copy of this decision to him after this hearing. He said that he owns the rental unit. He 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 affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. He affirmed that he was ready and prepared to proceed with this hearing.

The landlord affirmed that he did not require any English language translator at this hearing. I provided the landlord with ample and additional time during this hearing to find his application and evidence and review his documents.

During this hearing, I repeatedly warned the landlord about arguing with me, interrupting me, speaking at the same time as me, and yelling at me. However, I allowed him to attend this full hearing in order to present his application and evidence.

#### 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 April 20, 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 stated that the tenant was served with the landlord's application for dispute resolution hearing package on April 21, 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. He confirmed that his wife 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 April 24, 2023, three days after its posting, to the rental unit where the tenant is still residing.

The landlord testified that he provided late evidence, that was uploaded to the RTB online dispute access site on May 12 and 14, 2023. He stated that he did not serve this evidence to the tenant. I informed him that I could not consider this late evidence at this hearing or in my decision because it was not served to the tenant, as required. Rules 3.1 and 10 of the RTB *Rules*, require the landlord to serve all of his evidence to the other party. The landlord affirmed his understanding of same.

#### 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 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 stated the following facts. This tenancy began on November 1, 2015. Monthly rent in the current amount of \$1,683.49 is payable on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$800.00 were paid by the tenant and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified regarding the following facts. He wants an end to this tenancy as soon as possible. The tenant will not allow the landlord to enter the premises. The landlord served four different notices to the tenant. One time, the tenant was at the door, but did not allow the landlord to come inside. The other times, the tenant did not open the door for the landlord. The tenant changed the locks for the front door, so the landlord could not enter. The tenant installed a deadbolt from the inside of the door, so even if the landlord has a key, he cannot enter. The tenant disabled the smoke alarm last year and there was constant smoke inside. The landlord's property is in danger, and the landlord will not be notified by the fire company, since the smoke alarm is disabled. The landlord notified the tenant for the first few years and sent notices regarding safety concerns. The tenant is aggressive. April 29 was the last notice. On April 30, the tenant was yelling, screaming, and threatening his family, but the landlord was not present during this time. The landlord has a recording. The landlord is worried about the guests at his daughter's wedding.

The landlord stated the following facts. He is scared to go close to the tenant. He called the police and has a police file number. Yesterday, the police said that they could not contact the tenant and asked the landlord if he saw the tenant. The landlord and his children are scared that the tenant will "attack" again. There are five days in the landlord's daughter's wedding and everyone is scared that the tenant could do anything because he threatened before. The landlord has all the evidence and provided photographs of the notices on the door. There were videos made. There is other evidence of the front door lock. The photographs show the fire alarm is disabled. He

provided utility bills and notices, which were not paid by the tenant. He submitted all of the evidence.

## 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 his 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 testified that he served this application package to the tenant, as noted above. The landlord received a four-page Notice of Dispute Resolution Proceeding, dated April 20, 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.

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 his application, since he chose to file this application on his 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 did not sufficiently present his 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 28 minutes. Only the landlord attended this hearing, the tenant did not. I provided the landlord with ample time during this hearing to present his application, submissions, and evidence. I provided him with additional time during this hearing to find and review his application and evidence, since he did not have it all organized in front of him.

The landlord did not sufficiently review or explain the evidence he submitted with his application. He referenced providing photographs, videos, recordings, and notices, but did not sufficiently review or explain them in detail. He did not point me to specific documents, page numbers, provisions, or other information, during this hearing.

### 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 did not testify about which one of the above parts of section 56(a) of the *Act*, were relevant to his 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.

The landlord failed to produce any witnesses to testify at this hearing. He failed to provide witness statements as evidence for this hearing. He claimed that his family members felt scared and threatened by the tenant, when he was not present, yet he did not provide sufficient evidence of same.

The landlord did not provide any police reports or police statements, indicating that the police were called, as he claimed during this hearing. He claimed that he had a police file number but did not provide a police report for same, nor did he provide the police file number to me during this hearing. In any event, I do not have access to the police database in order to look up any police file numbers.

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 did not submit a 1 Month Notice as evidence for this hearing. The landlord 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 April 20, 2023, and this hearing occurred on May 16, 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 he 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 16, 2023

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Residential Tenancy Branch