



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **ET**

### **Introduction**

This hearing was convened by conference call as a result of the Landlord's application for dispute resolution (Application) under the *Residential Tenancy Act* (Act) for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:02 am, to enable the Tenant to call into this teleconference hearing. An agent (SL) attended the hearing, and he was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding (NDRP). I also confirmed from the teleconference system that SL and I were the only ones who had called into this teleconference. An employee (GW) of the Landlord was called during the hearing to provide testimony.

SL stated the NDRP and Landlord's evidence (NDRP Package) was served on the Tenant's door on May 11, 2023. SL submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-9 certifying the NDRP Package was served on the Tenant's door on May 11, 2023. Based on the undisputed testimony of SL, I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 90, I find the NDRP Package was deemed to have been received by the Tenant on May 14, 2023, being three days after it was served on the Tenant's door.

SL stated the Tenant did not serve any evidence on the Landlord for this proceeding.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

SL stated the residential property was purchased by a new owner (CBG) from the former landlord in May 2021. SL stated the Landlord was appointed the property agent by CBG. SL stated the tenancy commenced more than a year ago, with rent of \$470.00 payable on the first day of each month. SL stated the Tenant was required to pay a security deposit of \$200.00. SL stated the Tenant paid the security deposit and that the Landlord was holding the deposit in trust for the Tenant. Based on the undisputed testimony of SL, I find there is a tenancy between the parties and that I have jurisdiction to hear the Application.

SL submitted into evidence an incident report, dated May 7, 2023, prepared by GW. The report stated a guest of the Tenant came into the building and was seen adjusting his pants. GW reported he saw the handle of a semi-automatic pistol with the magazine removed. GW reported the guest passed the office and the pistol was clearly visible and that the guest continued to the Tenant's room.

GW confirmed accuracy of the contents of his statements in the incident report. GW stated a guest of the Tenant entered the building without the need for the Tenant to go to the entrance door of the building to let him in. GW stated he has observed the guest enter the building before without someone letting him in. GW stated it appears the Tenant gave a key to the building to the guest. GW stated, although there are no working cameras in the hallway, he could tell by the guest's footsteps that the guest went to the Tenant's room. GW stated the police came and he saw the Tenant and the guest being escorted from the building in handcuffs.

SL stated that the Tenant and his guest are a threat to the safety and well being of the other occupants of the residential property and its employees.

## Analysis

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 the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

### **Application for order ending tenancy early**

- 56(2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
- (a) the tenant or a person permitted in the manufactured home park 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.

*Residential Tenancy Branch Policy Guideline Number 51* (PG 51) provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of PG 51 are relevant to the Landlord's application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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).

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).

GW testified he saw the Tenant's guest enter the building with a semi-automatic weapon. GW testified the Tenant and his guest were escorted by police from the residential property in handcuffs. GW stated it appears the Tenant provided the guest with a key to the entrance of the building as he enters the building without the need for the tenant or another occupant opening the door for him. Based on the undisputed testimony of GW, I find the Tenant and his guest breached subsection 56(2)(a)(ii) of the Act as they posed a danger to the safety of the other occupants of the residential property when the guest entered the building with a semi-automatic weapon.

*Residential Policy Guideline 32* (PG 32) provides guidance on the interpretation of "illegal" and what may constitute "illegal activity" as used in the Act. PG 32 states in part:

[...]

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

[...]

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

[...]

As the Tenant and his guest were arrested by police, I infer the Tenant and his guest were engaged in an illegal activity. As such, I find the Tenant and his guest also breached section 56(2)(iv)(B) of the Act. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenant and his guest have breached sections 56(2)(a)(ii) and 56(2)(iv)(B) of the Act.

[...]

If a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity. The tenant may be found responsible for the illegal activity whether or not the tenant was actually present when the activity occurred, so long as it was in the rental unit or on the residential property.

Based on the undisputed testimony of GW, I find the police arrested the Tenant and his guest and removed from the residential property. From this, I infer the Tenant and his guest were engaged in an illegal activity. I find this illegal activity compromised the safety and well being of the other occupants of the residential premises. Based on the undisputed testimony of SL and GW, I find there is the potential for physical harm and possibly deadly consequences to other occupants of the residential property and the Landlord's employees if the Tenant continues to occupy the rental unit. Based on the foregoing, I find the Landlord has provided sufficient evidence to satisfy the requirement of section 56(b) that it would be unreasonable or unfair to the other occupants of the

residential property, and the Landlord's employees, to wait for the Landlord to serve a One Month Notice to End Tenancy to take effect pursuant to section 47 of the Act.

Pursuant to section 56, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached Order on the Tenant.

### Conclusion

The Landlord is granted an Order of Possession for the rental unit effective two days after service of this Order on the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order of Possession, the 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 28, 2023

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Residential Tenancy Branch