



# Dispute Resolution Services

Page: 1

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 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to end the tenancy early and for an Order of Possession.

The hearing was initially convened on May 25, 2023 but was adjourned by the Residential Tenancy Branch Arbitrator conducting that hearing to provide the parties with the opportunity to exchange documents.

The Arbitrator conducting the hearing on May 25, 2023 is not available to continue with these proceedings so the matter was reassigned to me. As the original Arbitrator made no findings on the merits of the Application for Dispute Resolution, I am able to consider the issues in dispute.

The Agent for the Landlord stated that on April 28, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 27, 2023 was posted on the door of the rental unit and was sent to the Tenant by registered mail. As this is an expedited hearing, posting these documents is a method of service authorized by the Director's Order of March 01, 2021, which reads in part:

*Section 9(3) of the Residential Tenancy Act (RTA) and Manufactured Home Park Tenancy Act (MHPTA) permit the director of the Residential Tenancy Branch to establish rules of procedure for the conduct of dispute resolution proceedings. Under Rule 10 of the rules of procedure, the director may set an application for dispute resolution down for an expedited hearing meaning it will be heard on short notice to the respondent.*

*Section 71(2)(a) and (c) of the RTA and section 64(2)(a) and (c) of the MHPTA allow the director to order that documents must be served in a manner the director considers necessary, despite the methods of service provided for in sections 88 and 89 of the RTA and sections 81 and 82 of the MHPTA, and that a document not served in accordance with those sections is sufficiently given or served for purposes of the Act.*

*THE DIRECTOR ORDERS that:*

*Pursuant to sections 71(2)(a) and (c) of the RTA and sections 64(2)(a) and (c) of the MHPTA, and subject to any further order made pursuant to those sections:*

*1. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between six and 11 days after the date the application is made must serve their materials*

- a. by leaving a copy with the person,*
- b. if the person is a landlord, by leaving a copy with an agent of the landlord, or*
- c. if the person is a tenant, by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.*

*2. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is between 12 and 16 days after the date the application is made must serve their materials*

- a. by any method set out in paragraph 1 of this order,*
- b. by attaching a copy to a door or other conspicuous place at the address at which the person resides,*
- c. if the person is a landlord, by attaching a copy to a door or other conspicuous place at the address at which the person carries on business as a landlord, or*
- d. by emailing a copy to an email address provided as an address for service by the person.*

*3. A party to an application for dispute resolution set down under Rule 10 of the rules of procedure for a hearing date that is 17 days or more after the date the application is made may serve their materials*

- a. by any method set out in paragraphs 1 and 2 of this order,*
- b. by sending a copy by registered mail to the address at which the person resides, or*
- c. if the person is a landlord, by sending a copy by registered mail to the address at which the person carries on business as a landlord.*

The Tenant acknowledged receipt of the aforementioned documents and they were accepted as evidence for these proceedings.

On May 19, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was posted on the Agent for the Landlord's door on May 19, 2023. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On May 23, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door

on May 23, 2023. The Tenant acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

On May 30, 2023 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was posted on the Agent for the Landlord's door on May 30, 2023. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

The Tenant submits that the Tenant asked the Landlord for a copy of the surveillance video taken in the lobby of the residential complex on April 25, 2023 which depicts the conclusion of the altercation between the Tenant and another occupant of the residential complex, whom I will refer to as "K".

The Agent for the Landlord and the Tenant agree that the requested video recording was provided to the Tenant on May 20, 2023.

The parties agree that neither party submitted this video recording as evidence for these proceedings.

The Tenant submits that the Landlord should have submitted this video recording as evidence for these proceedings, given that the Tenant had requested a copy of it, and that the Tenant presumed it would be submitted to the Residential Tenancy Branch by the Landlord.

Although the Landlord bears the burden of proving they have grounds to end this tenancy early, I find that the Landlord was under no obligation to submit the aforementioned video recording. The Landlord runs the risk of failing to meet the

burden of proof in the event that recording is required to prove there are grounds to end the tenancy.

The Agent for the Landlord submits that the Tenant should have submitted this recording as evidence for these proceedings if the Tenant deemed it relevant. I concur with this submission. The Tenant had an opportunity to submit this video recording once it was provided to him.

As the video recording was not submitted to the Residential Tenancy Branch, it clearly cannot be considered as evidence for these proceedings.

Although the recording is not before me, both parties were given the opportunity to describe the events that occurred in the lobby at the end of the altercation. I do not find the events described are highly relevant to my decision and I do not find that viewing this video will have any significant impact on my decision. I note that the parties' description of the events in the recording are reasonably consistent.

#### Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early and to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)*?

#### Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began in 2020.

The Agent for the Landlord and the Tenant agree that there was an altercation between the Tenant and "K" on April 25, 2023.

The Landlord submitted a copy of an incident report regarding the altercation on April 25, 2023. The Agent for the Landlord stated that she wrote this report after viewing the relevant video surveillance and after speaking with people who were involved with and/or who viewed the incident.

The Agent for the Landlord stated that:

- The altercation on April 25, 2023 was a "two-sided" event between "K" and the Tenant;

- “K” initiated the altercation by pushing the Tenant;
- The Tenant “went way too far” when he brought three weapons to the altercation;
- The Tenant told her he was acting in self defense but she does not believe this is a “fair argument” , given that the Tenant introduced the weapons;
- Sometime after being pushed by “K”, the Tenant exited his unit carrying an item she describes as a 2X4” (as can be seen in the video labelled “2X4”) which he shakes at “K”;
- Sometime late, the Tenant exits his unit and attempts to hit “K” with the hammer, as seen in the video labelled “hammer”;
- “K” was not banging on the Tenant’s door prior to the Tenant exiting with the hammer;
- The Tenant could have simply stayed in this unit, rather than hitting “K” with a hammer;
- Sometime later, the Tenant attempts to hit “K” with a long object, without any warning, as can be in the video labelled “metal\_pole”;
- The surveillance recordings show that after the Tenant ran to the lobby for help, “K” followed him to the lobby, was still holding the hammer and acting in a manner that suggests he wanted to continue the altercation; and
- “K” was removed from the lobby by the police officers who were called to the scene.

The Tenant stated that:

- He and “K” had a verbal disagreement;
- He has been diagnosed with PTSD;
- He recently had surgery on his foot and was “not interested” in fighting;
- “K” pushed him during that disagreement and threatened to hit him with a bat;
- The item he is carrying in the video labelled “2X4” is a piece of bamboo which can be seen in the photograph submitted by the Tenant;
- When he exited his apartment carrying the piece of bamboo, he was going across the hall to his friend’s house for the purposes of borrowing a tool, as he was going to make a flute out of the bamboo stick;
- He did not intend to use the stick as a weapon, although he did shake it at “K” when he encountered him in the hallway;
- He returned to his rental unit after the incident with the bamboo stick;
- “K” came to his unit and tried to push his way into the unit;
- He was holding a hammer when “K” attempted to enter his unit;
- He pushed “K” back into the hallway;

- “K” pushed him which causes him to turn his body and it appears as if he was trying to swing the hammer at “K”;
- “K” takes the hammer from him and hits him several times in the head;
- He runs down to the third floor;
- “K” comes down to third floor and can be heard saying that he is going to teach the Tenant a “lesson”;
- “K” is still holding the hammer when he comes to the third floor;
- He goes into a friend’s suite and comes out with a piece of wood, which he describes as a 2.5 piece of baseboard;
- He is not using a piece of pipe, as the Landlord submits;
- He tried to hit “K” with the piece of wood, but was acting in self defence;
- He could not retreat to the friend’s suite because “K” was too close to him;
- He could not stay in the friend’s suite because his friend was not home, the person in the suite did not want him to stay, and the door to that suite did not close properly;
- He felt trapped and had nowhere to go to avoid “K”;
- He hit “K” several times and “K” hit him with the hammer;
- He fled to the lobby immediately after this interaction, where he requested assistance;
- “K” followed him to the lobby and stood over him with the hammer held in a menacing manner;
- The police removed “K” from the lobby; and
- Neither party was charged with assault.

The Co-tenant stated that:

- “K” came into their house and attacked them prior to the incident with the hammer;
- She was begging “K” not to fight with the Tenant;
- “K” threatened to hurt her as well;
- She heard “K” tell the Tenant he was going to teach him a lesson;
- “K” was intent on fighting with the Tenant; and
- She and the Tenant should be protected from the level of violence displayed by “K”.

The Witness stated that:

- She is an employee of the residential complex;
- She was working on May 21, 2023;

- On May 21, 2023 the Tenant told her he was unable to access his unit;
- She told him there would be a delay in assisting him;
- She eventually provided him with access to the unit;
- Shortly thereafter, the Tenant telephoned the front desk and reported that the Co-tenant was unresponsive;
- She rushed to the unit and determined that the Co-tenant had merely been sleeping;
- She told the Tenant it was inappropriate to falsely report an emergency;
- He came to the front desk and was very angry;
- He called them inappropriate names and banged on the plexiglass window;
- No employee should be subject to the abuse demonstrated on that day; and
- Even if she has subsequently been alone with the Tenant, that does not mean she did not feel unsafe on May 21, 2023.

In regard to the incident on May 21, 2023, the Tenant stated that:

- It took the Witness 25 minutes to provide him with access to his unit after he requested her assistance;
- When he accessed his unit, he found the Co-tenant unresponsive;
- He recently saved someone's life who had been unresponsive and he was still "wound up" due to his PTSD;
- He shook her and determined she had been sleeping;
- He went to the front desk to explain the potential impacts the delay in accessing the room could have had;
- He did not telephone the front desk to report that his Co-tenant was unresponsive;
- The Witness did not come to the unit to check the welfare of his Co-tenant;
- The Witness was smirking at him when he discussed his concerns with her;
- He was very angry and was yelling at the staff;
- He banged on the plexiglass window; and
- He has since been alone with the Witness so he does not believe she is afraid of him.

In regard to the incident on May 21, 2023, the Agent for the Landlord stated that:

- Even though the Tenant may have been disturbed when he believed the Co-tenant was unresponsive, his response was unacceptable;
- The employees who were the subject of his anger could have felt at risk; and
- Staff at the residential complex should be subject to abuse.

The Landlord submitted a copy of a letter, dated April 27, 2023, in which the Landlord referenced the violent incident that occurred on April 25, 2023 and in which the Landlord directed the Tenant to adhere to the rules of the Good Neighbor Agreement and Guidelines for Living in a Safe and Secure Single Room Accommodation Hotel. The letter further declares that the Landlord wishes to support your housing at the complex and that any “further infractions will result in a breach of tenancy and could possibly affect your tenancy” at the complex.

The Landlord submitted a copy of a letter, dated May 23, 2023, in which the Landlord referenced the incident that occurred on May 21, 2023 and in which the Landlord directed the Tenant to adhere to the rules of the Good Neighbor Agreement and Guidelines for Living in a Safe and Secure Single Room Accommodation Hotel. The letter further declares that the Landlord wishes to support your housing at the complex and that any “further infractions will result in a breach of tenancy and could possibly affect your tenancy” at the complex.

The Advocate for the Tenant submits that the letters of April 27, 2023 and May 23, 2023 suggests that the Landlord believes it is not unreasonable for the tenancy to end pursuant to service of a One Month Notice to End Tenancy, which has not been served. He submits that there is no need to end this tenancy early and that the Landlord should serve the Tenant with a One Month Notice to End Tenancy if they wish to end this tenancy because of these incidents.

The Agent for the Landlord stated that she served the Tenant with the letters of April 27, 2023 and May 23, 2023, but neither letter declares that the Landlord would not be seeking an early end to the tenancy. Residential Tenancy Branch records show that the Landlord filed this Application for Dispute Resolution on April 27, 2023, which is the same day as the April 27, 2023 letter was written and before the May 23, 2023 letter was written.

The Tenant submitted letters from medical practitioners that declare, in part, that he has been diagnosed with PTSD; that stressful events trigger increased stress responses; and that he has not shown any violent tendencies.



### Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

On the basis of the undisputed evidence, I find that “K” instigated the physical altercation that occurred on April 25, 2023 when he pushed the Tenant. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that “K” threatened the Tenant with a bat during the argument that preceded the altercation.

While I accept the Tenant's testimony that he did not intend to use a bamboo stick as a weapon when he entered the hallway on April 25, 2023, I find, on the basis of the video labelled "2X4", that he waved the stick at "K" in a menacing manner.

After viewing the video labelled "hammer", I find that the Tenant has misrepresented some the circumstances related to the incident with the hammer. Specifically, I find that "K" did not attempt to push his way into the unit just prior to the Tenant exiting with the hammer. Rather, I find that "K" was standing outside the rental unit, apparently talking to people inside the unit through a closed door, when the Tenant came rushing out of the unit holding a hammer.

After viewing the video labelled "hammer", I find that the Co-tenant's testimony that "K" came into their house prior to the incident with the hammer and attacked them is wholly unreliable.

I do not find that the Tenant "appears" to be hitting "K" with a hammer because "K" turned the Tenant's body, as the Tenant submits. Rather, on the basis of the video labelled "hammer", I find that the Tenant very clearly attempts to hit "K" with the hammer and that it was very a violent attack.

I accept the Tenant's testimony that "K" was able to take the hammer and that "K" used it to hit the Tenant, as that testimony is supported by the video labelled "hammer".

I concur with the Landlord's submission that the Tenant could have remained in this unit rather than exiting with a hammer. I find that the Tenant likely could have avoided a physical confrontation with "K" by remaining inside his unit. I find that the Tenant drastically exacerbated this interaction when he assaulted "K" with a hammer.

After viewing the video labelled "metal\_pole", I find that the Tenant has misrepresented some the circumstances related to the incident that occurred on the third floor.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant was using a piece of baseboard, rather than a metal object, when he fought with "K" on the third floor.

I accept the Tenant's submission that "K" declared that he was going to teach the Tenant a lesson when he followed the Tenant to the third floor, as this is supported by the Co-tenant's testimony.

I find that the video labelled "metal\_pole" does not, however, corroborate the Tenant's submission that he felt trapped and had nowhere to go. I find that the video strongly suggests that he was waiting on the third floor and was preparing to continue the altercation with "K". I find that the Tenant had sufficient time to leave the area if his intent was to avoid further conflict with "K".

Rather than leaving the area, I find that the video clearly shows that the Tenant waited for "K" to arrive; that he rushed at "K" without any reasonable warning or notice; and that he attempted to hit "K" with a piece of wood. I find it difficult to accept that he was acting in self defence at this point, given he clearly could have left the area.

While I accept that "K" was still holding the hammer when the Tenant rushed at him with the piece of wood, I find that the Tenant could not reasonably have known that "K" still had the hammer, as the Tenant rushed from behind a wall just prior to attempting to hit "K".

On the basis of the video labelled "metal\_pole", I find that the men became involved in a physical struggle where both parties exchanged violent blows and they struggled over possession of the hammer.

While I accept that "K" instigated this physical altercation when he initially pushed the Tenant and that he clearly displayed his intent to continue with the altercation when he followed the Tenant throughout the residential complex, I find that the Tenant exacerbated the level of violence in this altercation. I find that the Tenant introduced the hammer to the altercation and that he introduced a piece of wood, which he describes as a piece of baseboard. I find that the Tenant very clearly used these items as weapons and that they greatly contributed to the level of violence.

While I cannot in any way condone "K"'s actions and I concur with the Co-tenant's observation that all tenants deserve to be protected from violence, these proceedings are not intended to determine whether "K"'s tenancy should end as a result of this incident. That is a matter to be determined at a later date in the event the Landlord chooses to end "K"'s tenancy on the basis of this incident.

While I accept the Co-tenant's testimony that "K" threatened to hurt her, I find that is an issue that matter is more relevant to whether "K"'s tenancy should end. I note that the Tenant did not appear to be acting in immediate defense of the Co-tenant, as he left her

on the fourth floor when he ran to the third floor. I do not mean to suggest that the Tenant should have stayed on the fourth floor. I mention this solely to establish that I am not convinced the Tenant had any reasonable reason to justify introducing the hammer to the altercation.

I find that the weapons the Tenant brought to this incident seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I therefore find that the Landlord has grounds to end this tenancy early, pursuant to section 56(1) of the *Act*. Not only did the weapons pose a significant threat to “K”, but they also posed a potential threat to other people who may have been walking by the incident or who may have intervened in the altercation. This is a level of violence that is simply unacceptable in a residential complex and cannot be permitted.

Given the level of violence and the weapons involved in this incident, I find that it would be unreasonable in these circumstances to wait for a notice to end the tenancy under section 47 of the *Act* to take effect. I therefore grant the application to end this tenancy early and I grant the Landlord an Order of Possession.

I find that none of the Tenant’s actions in the lobby on April 25, 2023 contribute to my conclusion that this tenancy should end early.

On the basis of the undisputed evidence and the video evidence submitted, I find that the Tenant acted aggressively towards staff on May 21, 2023. Regardless of the reasons for his anger, I find that his behaviour was wholly inappropriate and that no employee should be subject to that type of behaviour.

While I may not have concluded that the incident on May 21, 2023 were grounds to end the tenancy pursuant to section 56(1) of the *Act*, in and of itself, I find that it supports a conclusion that it would be unreasonable in these circumstances to wait for a notice to end the tenancy under section 47 of the *Act* to take effect. I find that the Tenant has demonstrated a pattern of violent behavior and that this tenancy should end with short notice.

In adjudicating this matter, I have placed no weight on the Tenant’s testimony that he recently had surgery on his foot and was “not interested” in fighting. I find that the video evidence clearly establishes the Tenant’s intent to violently engage with “K”.

In adjudicating this matter, I have placed no weight on the medical evidence that shows the Tenant has been diagnosed with PTSD and that stressful events trigger increased stress responses. Regardless of this diagnosis, individuals living in the residential complex with the Tenant must be protected from violent behavior.

In adjudicating this matter, I have placed no weight on the medical evidence that shows the Tenant has not shown any violent tendencies. While I accept that the Tenant has not shown any violent tendencies while engaging with the medical practitioners, the video evidence clearly shows the level of violence he can demonstrate.

I acknowledge that the Landlord served the Tenant with a letter, dated April 27, 2023, in which the Landlord referenced the violent incident that occurred on April 25, 2023 and in which the Landlord declared, in part, that “further infractions will result in a beach of tenancy and could possibly affect your tenancy” at the complex. I find this letter served as written notice that the Landlord believed the Tenant has breached a material term of the tenancy agreement. I find this letter was necessary if the Landlord wished to end the tenancy based on this incident, pursuant to section 47(h) of the *Act*. There is no evidence that the Landlord is attempting to end this tenancy pursuant to section 47(h) of the *Act*, and I therefore find that this letter was not necessary.

The Landlord is attempting to end this tenancy pursuant to section 56(1) of the *Act*, which does not require that the Landlord serve the Tenant written notice of a breach. When a Landlord ends a tenancy pursuant to section 56(1) of the *Act*, the reason for ending the tenancy is typically so serious that any tenant would realize the behavior was inappropriate. I find that the Tenant should have understood that attempting to hit another occupant with a hammer is entirely inappropriate and a warning letter was not required.

I do not concur with the Advocate for the Tenant’s submission that the letters of April 27, 2023 and May 23, 2023 suggest that the Landlord believed it was not unreasonable for the tenancy to end pursuant to service of a One Month Notice to End Tenancy.

Although the letter of April 27, 2023 declares, in part, that any “further infractions will result in a beach of tenancy and could possibly affect your tenancy”, I find that on April 27, 2023 the Landlord concluded that the tenancy should end early because of this incident. In reaching this conclusion I was heavily influenced by the fact the Landlord filed this Application for Dispute Resolution on April 27, 2023.

Even if the Landlord had not decided that the tenancy should end early by the time the Landlord wrote the letter of April 27, 2023, I find that it was not unreasonable for the Landlord to subsequently conclude that the incident was serious enough to end the tenancy early. As is clear from this decision, I concur with the Landlord's conclusion that this tenancy should end early because of this incident.

I further find that the Tenant knew, or should have known, that the Landlord wished to end his tenancy because of the April 27<sup>th</sup> incident because he located a copy of this Application for Dispute Resolution on his door April 28, 2023.

I further find that the Tenant knew, or should have known, that the Landlord wished to end his tenancy despite the letter dated May 23, 2023, as he had already been served with this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

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: June 03, 2023

---

Residential Tenancy Branch