



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      ET

### Preliminary Issues

At the outset of the hearing the Landlord advised she had amended her application for dispute resolution to withdraw her request for monetary compensation and was only seeking the Order of Possession and recovery of the filing fee at this time.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession to end the tenancy early and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, personally from the Landlord to an adult occupant on March 31, 2011. The Tenants confirmed receipt of the Landlord's amended application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession under section 56 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenants' witness attempted to provide testimony and although he confirmed he was an occupant in the rental unit you continued to seek guidance from the Tenants before answering when he moved in. Given that the witness could not provide the basic testimony as to when he began to occupy the unit without first consulting with the

Tenants, I felt the remainder of his testimony would not be considered credible and I dismissed him from the hearing. The tenants occupy the upper floor of the house and the Landlord and her three children aged 13, 14, and 17 occupy the lower level of the house.

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective December 15, 2010 that may switch to a month to month tenancy after six months. Rent is payable on the first of each month in the amount of \$1,250.00 and utilities are payable on the fifteenth of each month in the amount of \$175.76. The Tenants paid the Landlord \$650.00 on December 15, 2010 which is comprised of \$625.00 for the security deposit and \$25.00 for the pet deposit. A move-in inspection report was completed shortly after the tenancy began.

The Landlord testified that since the onset of the tenancy the Tenants have allowed other people to occupy the unit with them. Around mid January 2011 the Landlord noticed a female who had been living at the unit and questions the female Tenant about who this person was. The female Tenant stated it was her mother and she did not live there she was only visiting. On January 17, 2011 the female Tenant's mother (referred to here after as the Mother) was arrested in the carport of the house. The police officer told the Landlord the Mother was well known to them for drug use and she should consider evicting her. The Landlord informed the police officer the Mother did not live there at which time the police officer stated she gave that address as her home address. The female Tenant told the Landlord her Mother would be gone by February 7, 2011.

Shortly after February 7, 2011 the Landlord saw a police officer at the front door of the upper unit so she approached and asked why the police were there. The police officer could not disclose why they were there so the Landlord knocked on the Tenant's door. A man, the female Tenant's Father (here in after referred to as the Father) answered who was wearing a house arrest band on his ankle. The Landlord called the female Tenant at work and asked why she did not disclose that her Father was at the unit while on house arrest.

March 27, 2011 at 7:00 a.m. the Landlord heard a disturbance and went outside to see that the Tenants and occupants had been sprayed with bear spray. The spray appeared to have been discharged throughout the entire rental unit and affected the Landlord's unit for several hours afterwards. After noticing the people outside the Landlord grabbed her phone and began to call 911. Then a man went running by and hopped over the fence and into a car where a woman was waiting. He pointed directly at the Landlord and yelled "get rid of the crack head. I'm coming back with a shot gun

and killing everyone in the house.” Ten police cars arrived and the police set up road blocks around the neighbourhood. The man was caught and arrested.

The Landlord's older daughter (22 years of age) came over later that day to check on everyone. Just as they were going back into the house the Mother began to approach them and was talking and not making any sense at all. She was saying something about getting money for the damage in the bedroom and appeared to be on drugs. The Landlord told the Mother not to enter her residence or she would call the police. The Mother said back to the Landlord “my people will be taking care of you”. The police were called and later contacted the Mother and told the Mother not to have contact with the Landlord again.

The Landlord confirmed the property has been sold and the Tenants were issued a 2 Month Notice to End Tenancy and they are on their free month for April 2011. She has attempted to work with the Tenants peacefully however this is no way for her or her children to have to live. She was able to gain entry into the rental unit yesterday, with police escort so she could take pictures and check for further damage. At this point she saw one bedroom which has every wall, from floor to ceiling, drawn on, and very dirty stained carpet.

The female Tenant testified and confirmed her Mother and Father had been residing at the rental unit. She argued that she was not required to inform the Landlord that her Father was on house arrest. Her Mother did have a drug problem but she came out of rehab about one and a half weeks ago. She says the Landlord made an agreement with a previous occupant about painting the bedroom and that her Mother never threatened the Landlord.

The male Tenant confirmed his brother was the person who sprayed the mace in their rental unit and threatened the Landlord on March 27, 2011. He has since been arrested for two counts of assault with a deadly weapon. They had allowed his brother and his girlfriend to reside at the rental unit since around the beginning to mid February 2011 as they were in town looking for work.

### Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Upon careful consideration of the evidence before me I find the Landlord has proven that the Tenants and/or their guests have engaged in an activity that has caused 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 property, mainly the Landlord and her three children, and have jeopardized or are likely to jeopardize a lawful right or interest of another occupant or the Landlord.

Next I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect. I have accepted that the Tenants and/or their guests have engaged in activity that has ultimately caused damage to the rental unit and has jeopardized the safety and lawful right or interest of the Landlord and her children. Based on these conclusions I find it would be unreasonable to wait for a one month Notice to End Tenancy to take effect. The relationship is deteriorating and escalating with the possibility for the Landlord and her children suffering further loss or damage. Therefore, I grant the Landlord's application to end this tenancy early.

The Landlord has been successful with her application and therefore I award recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the Landlord an Order of Possession effective **immediately** after it is served upon the Tenants. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may withhold the one time award of \$50.00 from the Tenant's security deposit.

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: April 06, 2011.

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Residential Tenancy Branch