



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Cardinal West Investments Ltd and  
[tenant name suppressed to protect privacy]

### DECISION

Dispute Codes ET

#### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

All parties appeared for the hearing and provided testimony. The Tenant acknowledged receiving the Landlord's Notice of Hearing and application package on December 11, 2019. The Tenant did not submit any documentary evidence.

Given this is an expedited hearing, I take note of the following Orders by the Branch Director and the related Rules:

*Pursuant to sections 71(2)(a) and (c) of the RTA and sections 64(2)(a) and (c) of the MHPTA, the Director Orders that documents be served as follows for an expedited hearing:*

- 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, or*
  - 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.*

After reviewing this application, I note the application was made and the Notice of Hearing was made available to the applicant 9 days before this hearing. The applicant stated that they served the Notice of Hearing and evidence by giving it to the Tenant, in person, on December 11, 2019, which the Tenant confirmed. I find the applicant sufficiently served the respondent and in accordance with the Rules for this type of hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make oral submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter #1

At the beginning of the hearing, I explained to all in attendance the importance of not speaking over top of each other and speaking out of order. I explained that the Landlord would speak first, to explain why they required an early end to the tenancy, then the Tenant, and her partner, would have a chance to respond after the Landlord was finished. Despite explaining this, and warning the Tenant's partner numerous times, he continued to talk over top of others, interrupt, and speak out of turn in an argumentative fashion. The Tenant's partner was cautioned that his participation would be limited, if he continued to be disruptive and speak out of turn.

#### Preliminary Matter #2

This hearing was scheduled to last 1 hour, and the entire hearing time was utilized for testimony from both parties. At the end of the hearing, I offered the parties a chance to adjourn the hearing, and reconvene, in case they still had further testimony they wanted to provide. However, the Landlord decided that they wanted me to make a decision on their application, based on the testimony provided, and they did not want to further delay things by having a second hearing. The Tenant did not object to this. As such, the hearing was not adjourned, as neither party expressed an interest in providing further testimony and having a second hearing.

#### Issue(s) to be Decided

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

#### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings or unless it was specifically referred to by the parties.

The Landlord (agent of) stated that the management of the rental building changed this last year, and as a result, they do not have the full history of conversations and requests with this Tenant. The Landlord explained that they have had numerous conversations over the last year, in the Summer and Fall of 2019, where the Tenant had requested some repairs to be done to the rental unit. The Landlord stated that most of these items were smaller fixes, including the bathroom fan. The Landlord stated that sometime in October, they attended the unit to follow up with the repair requests and initiate the process of doing the repairs.

At this point, the Landlord stated that they found black mould in the bathroom and kitchen areas. Subsequently, the Landlord stated that they brought in a mould remediation company, who found mould accumulating all over the walls, under the kitchen and bathroom sinks. The remediation company found, as they cleaned and dried the areas around the sinks, that the flooring and sub-floor was saturated and likely had been for some time. The Landlord stated that they noted that there were leaks in the bathroom tub, the toilet gasket (where it attached to the floor), in addition to both sinks.

The Tenant's partner spoke to the fact that none of the contractors the Landlord used were legitimate, and he opined that they are all unlicensed and fraudulent. The Tenant did not provide any documentary evidence to support this claim. The Tenant's partner stated he tried looking the companies up online, and it appeared some of the companies were either newly formed, or lacked a legitimate storefront or webpage. In contrast, the Landlord provided invoices, estimates, and reports from both remediation companies and spoke to the fact that they only used qualified people and companies.

The Landlord explained that what started as a small repair list, and a bathroom fan replacement, quickly escalated into an extensive mould remediation (due to multiple leaks), and water infiltration into walls and subfloors. The

Landlord stated that the remediation work began on November 12, 2019, and the Tenants stayed in a hotel for the week (paid for by the Landlord) while these repairs were being done (bathroom walls, toilet, sink, floors pulled apart). The Landlord explained that on November 22, 2019, the plumber came to finish up some work, and when he turned the water back on, a different water leak occurred. The Landlord stated that this secondary leak was the result of a pipe burst in the ceiling of the bedroom and damaged the drywall and flooded the unit.

The Landlord stated that there is currently no functioning bathroom at this point because it all had to be torn out to dry out and fix the damage. After leaving for the initial renovation period in November, the Tenant and her partner still have not formally moved back in, although their belongings are still there, and they have been back and forth a few times. The Landlord explained that after the secondary leak occurred (pipe burst) on November 22, 2019, they had a flood remediation company come to help with the cleanup. This remediation company did materials testing and concluded that there was asbestos in the ceiling which was collapsing, and in other areas. The remediation company urged proper cleanup and advised that they need the unit vacant prior to finishing the remediation, as asbestos was disturbed. The Landlord provided copies of the remediation report, as well as photos of the damages showing that the asbestos containing ceiling was falling down.

The Landlord explained that the rental unit is currently not safe for anyone to be in, and the remediation companies won't come and remove their equipment (fans etc) until the Landlord commits to doing a full remediation of the entire unit, as there is disturbed asbestos and lead in multiple areas that is being tracked around. The Landlord stated that the Tenant's belongings are still there, and they need the Tenant to move out in order to complete the work.

The Landlord stated that the Tenant's partner has a history of being aggressive and hostile, which has significantly exacerbated the recent issues with the mould, the flood, and the remediation because he has been very difficult to work with. The Landlord stated that they issued a 1-Month Notice to End Tenancy for Cause "the Notice" (based on this whole situation) on November 26, 2019. The Landlord explained that this Notice was triggered largely because the Tenant's partner has been aggressive, hostile, and disruptive. The Landlord provided a copy of the Notice into evidence, which echoes her issues raised today.

The Landlord explained that they are pursuing this early end to the tenancy because of the issues identified on the Notice, plus the fact that the situation with the hazardous materials, and the Tenant's disruptive behaviours, has created a hazardous situation for workers, other Tenant's in the building, and the Landlord. The Landlord stressed the importance of proper cleanup and took issue with the Tenant's intimidating and disruptive behaviour because it is delaying the cleanup, increasing the potential for cross contamination, and risking the health and safety of others. The Landlord opined that it is unreasonable and unfair for them to wait for the Notice to take effect.

The Landlord focused on the following ground to support that the tenancy needs to end early. The Tenant or occupant has:

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

This ground is also selected on the Notice issued on November 26, 2019. The Landlord pointed to a couple of incidents regarding the Tenant's partner's behaviour. The Landlord stated that on November 20, 2019, the Tenant's partner came to the building to view the progress of the repairs in the suite. This was prior to the secondary leak which disturbed the asbestos, on November 22, 2019. The Landlord stated that when the Tenant's partner attended the unit, he was hostile and aggressive, and was yelling at the Landlord. The Landlord provided an email from a Tenant in the building who overheard the exchange and wrote to the Landlord to make sure everything was okay. The Tenant's partner denies that he was abusive or aggressive.

The Landlord also stated that another resident in the building has overheard the Tenant's partner yelling and screaming inside the unit on several occasions. The Landlord provided a text message from this resident dated November 11, 2019, where they express concern over the safety of the Tenant due to the heated arguments. Another

resident in the building also wrote an email stating that they have overheard several episodes of screaming and arguing coming from this unit, involving the Tenant and her partner.

The Landlord explained that the Tenant's partner has a history of hostility over the past year or two which mainly involves himself and the Tenant. However, the Landlord explained that the Tenant's partner has now become hostile and aggressive towards them, and this is echoed by the person who overheard the interaction on November 20, 2019. The Landlord explained that they issued a caution notice to the Tenant on November 22, 2019, prior to issuing the 1 Month Notice on November 26, 2019. However, the Landlord stated that the Tenant's partner has interfered with the plumber, and been rude and aggressive to the building manager since the caution was given. The Landlord issued the Notice after several days of continued escalation and after the Tenant began threatening lawsuits, making false accusations, and badgering contractors trying to do the work.

The Landlord stated that the contractors now refuse to come back because of how difficult the Tenant's partner has been. The Landlord explained that the Tenant's partner has engaged in "investigative journalism" and tried to unearth different facts and issues with their choice of contractors and their methods for doing the repairs.

The Tenant and her partner stated that they had numerous conversations with the previous property manager about some of the leaks, the broken bathroom fan, and other things, but they always got ignored up until recently. The Tenant did not have any documentary evidence to support this. The Tenant stated that her and her partner are now living elsewhere, and are awaiting for the unit to be fixed so that they can continue the tenancy. The Tenant feels the Landlord has engaged a fraudulent contractor to do the work, which has exacerbated the issues. The Tenant did not provide any documentary evidence to support any of their allegations.

The Tenant feels that the repairs could be completed in a week or two, but the Landlord stated it will take multiple months. The Tenant denies that there is asbestos because when he was there, he noted that the remediators were onsite at one point with no protective equipment. The Tenant stated that there was a dishwasher leak in an adjacent unit, and that there are other moisture problems in the building. The Landlord denies that this is the case, and stated the issue is in this unit for the most part.

The Tenant's partner denied being aggressive, hostile, or disruptive to the Landlord, and feels this is being overstated so that they can end the tenancy.

#### Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied that:

- 1) There is sufficient cause to end the tenancy based on any of the following causes:
  - 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,

And,

- 2) 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.

I have carefully considered the testimony of both parties. The Landlord was the only party who presented documentary evidence. It is clear based on the testimony from both parties that the relationship between the Tenant (including her partner) and the Landlords has degraded significantly over the past couple of months.

Although the Tenant's partner denied being aggressive, forceful, hostile, and disruptive, the Landlord provided a different version of events. The Landlord has explained that there is a history of other occupants in the building overhearing domestic disputes within the rental unit and being intimidated by what they hear (yelling and screaming). The Landlord provided statements from other occupants who confirm they have heard this in the past. Further, the Landlord also explained that more recently, the Tenant's partner's hostility has directly impacted their duties and repairs to the unit. More specifically, the Landlord explained that the Tenant has appeared and interfered multiple times throughout the remediation process with both the contractors and the Landlord.

On November 20, 2019, the Landlord stated that the Tenant's partner was hostile and aggressive, and was yelling at them in an abusive manner. This incident is corroborated by the email from another occupant in the building who found the Tenant's partner's yelling and confrontational behaviour disturbing.

When comparing the Tenant's partner's version of events with that of the Landlord, I find the Landlord has provided a more compelling and detailed account of what occurred, which includes witness statements. As such, I prefer the Landlord's version of events on this point. I find it more likely than not that the Tenant's partner was overly aggressive, confrontational, and disruptive when he attended the rental unit on November 20, 2019.

It appears the relationship continued to degrade since that time, with further caution notices, a 1 month notice, and more contentious discussions between the Landlord (or agents of) and the Tenant, as well as between the Tenant's partner and the contractors. It appears as though the contractors do not want to return and work around the Tenant's partner. I understand that this particular situation (flood, hazardous materials, degrading relationships) could bring significant stress to anyone going through it. However, I find the Tenant's partner's behaviour goes beyond what I would consider reasonable in the circumstances.

I note there is documentary evidence to show that there are significant hazardous materials concerns (mould, asbestos, lead) in multiple locations. The remediation company opined that it is not safe, as there is asbestos containing material that has been disturbed and spread around. This has further complicated the situation.

Having considered the totality of the evidence and testimony, I find that the Tenant's partner's behaviour, in conjunction with the significant hazardous materials present, have created a dangerous situation, as it appears the

repairs cannot continue until the hazardous materials are cleaned up. The contractor has specified that the unit needs to be vacant for this to occur. I note there are several parties which are at risk, including: other occupants in the building who share common space, entrances, or hallways with this rental unit; the Landlord, agents and managers; the Tenants themselves; and contractors. This situation needs to be navigated appropriately, and I find the Landlord has attempted to repair and remediate the different issues, as they come up. However, I find these attempts have been undermined by the Tenant's partner's hostile and aggressive behaviour. Even though some of the repairs and issues with the remediation are not due to the Tenant's misuse or neglect, and appear accidental (ie- burst pipe), I find the situation has become hazardous due to the interpersonal conflict which is impeding a safe, fast, and effective remediation.

I find the Tenant's partner's behaviour is significant and severe enough as to warrant an early end to the tenancy, pursuant to section 56 of the Act. I find the Tenant's partner's behaviour has exacerbated an already sensitive and dangerous repair process, which has seriously jeopardized the health and safety of the Landlord or other occupant. Given the significant health concerns at play, I further find it is not reasonable for the Landlord to wait for the Notice for Cause to take effect. As such, I find the Landlord is entitled to an order of possession, effective 2 days after service on the Tenant.

#### Conclusion

The Landlord has met the burden to prove the tenancy should end early.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: December 20, 2019

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Residential Tenancy Branch