

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: ET

### Introduction

This hearing dealt with an application by the landlord for an early end to tenancy and order of possession. Both parties participated in the conference call hearing and had opportunity to be heard.

The application initially named a second tenant, S.A., as a respondent. At the outset of the hearing the tenant advised that S.A. was his 6 year old daughter. I find it appropriate to remove S.A. as a respondent. The style of cause in this decision reflects that amendment.

### Issue(s) to be Decided

Does the landlord have grounds to end the tenancy early?

### Background and Evidence

The rental unit is located on the lower floor of a residence in which the landlord occupies the upper floor. The landlord's agent testified that in early January, a leak developed in the rental unit and that the tenant banged on the door of the landlord's suite, using foul language and threatening to kill the landlord. The police were summoned. A police report was not entered into evidence and there is no suggestion that charges were laid as a result of this incident. The landlord's agent further testified that the tenant brought a cat into the rental unit, aggravating the allergies of the landlord's child and that the landlord's children were afraid to go outside for fear of the tenant. The landlord's agent further testified that the tenant caused excessive noise, banging doors and disturbing the landlord's family.

The tenant testified that when the leak developed in the basement, he telephoned the number provided by the landlord and when the landlord answered, he denied that he

had a tenant in the basement. A second call resulted in the landlord hanging up on the tenant. The tenant testified that after the landlord hung up on him, he banged on the landlord's door to tell him about the leak. The tenant denied that he threatened the landlord in any way and testified that the landlord threatened him when he suggested that a building inspector conduct an inspection of the rental unit. The tenant testified that the landlord permitted him to bring a cat into the rental unit and that the banging heard by the landlord is necessary to shut the doors in the rental unit because they cannot be closed securely without the application of some force.

### Analysis

The landlord's agent and the tenant both gave sworn testimony at the hearing. Without making a finding of credibility, I must consider that the landlord's agent was not present when the threats were allegedly made and his testimony on this point was hearsay. I find I must give less weight to hearsay evidence than to direct evidence and I find that the landlord has not proven on the balance of probabilities that the tenant threatened the landlord. As for the landlord's allegation that the tenant is making excessive noise and has brought a cat into the rental unit in violation of a term of the tenancy agreement, I note that under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that "it would be *unreasonable, or unfair* to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47" (emphasis mine). I am not satisfied that this unreasonableness or unfairness exists. While this may establish cause to end the tenancy upon one month's notice, these allegations do not give rise to an extraordinary remedy such as this. For the above reasons I dismiss the landlord's application. The landlord will bear the cost of the filing fee.

### Conclusion

The landlord's claim is dismissed.

Dated January 28, 2009.

