



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

ET

FF

### Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant. Both parties appeared and each gave testimony in turn.

### Issue(s) to be Decided

The landlord is seeking an Order of Possession based on section 56(1) of the *Residential Tenancy Act*, (the *Act*), which permits the landlord to end a tenancy without notice to a tenant in certain restricted and compelling circumstances. In making a determination on this matter, the following issue must be to be decided based on the testimony and the evidence presented during the proceedings:

- Has the landlord established sufficient proof that the criteria contained in section 56(2) of the *Act* has been met to justify ending the tenancy and entitle the Landlord to be granted an Order of Possession under the *Residential Tenancy Act*, (the *Act*)? This requires a determination of whether both of the following has occurred:
  - a) the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed ,

seriously jeopardized the health or safety or a lawful right or interest of the landlord or other occupants, or has put the landlord's property at significant risk or engaged in illegal activity that has resulted in causing damage, and affecting the quiet enjoyment, security, safety, physical well-being, lawful right or interest of another occupant of 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.

### **Preliminary Matter**

The landlord had submitted additional evidence that was served on the tenant by posting it on the door on April 14, 2009. Under the Act and Rules of Procedure, any document posted is deemed to be served in three days. Pursuant to the Residential Tenancy Rules of Procedure Rule 3.4, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

In this instance I found that the evidence would not be accepted as it was received beyond the deadline specified for submission of evidence. Therefore this evidence was not taken into consideration in the determination of this dispute.

### **Background and Evidence**

The landlord had submitted into evidence a copy of a written statement by the landlord alleging that the tenant's guest threatened to kill the landlord and tampered with the electrical switch. The landlord testified that the tenant had also refused access to the landlord and had brought a dog to stay in the unit. The landlord testified that there have been some confrontations necessitating police intervention. In addition, the landlord testified that the tenant was in rental

arrears for which a hearing is scheduled in future based on a Ten-Day Notice to End Tenancy for Unpaid Rent. The landlord also testified that a One-Month Notice for Cause was issued on January 15, 2009 on a defunct form and that another One Month Notice was issued on March 1, 2009 on the proper form.

The tenant disputed that a threat was made. The tenant testified that the landlord had disconnected power to the tenant's suite and that the tenant had merely reciprocated by shutting off the landlord's power until the landlord agreed to restore the tenant's power. The tenant testified that access was denied to the landlord because the landlord failed to give written notice under the Act. In regards to the dog, the tenant testified that the animal does not live in the unit, but was brought there for security reasons. The tenant acknowledged that rent was withheld but explained that this was because the tenant believed that the ending of the tenancy was imminent. The tenant testified that the tenant had one of the missing rent cheques available to give the landlord and could also instruct the Ministry to release the other missing cheque. The tenant acknowledged that the tenancy had been fraught with problems but stated that finding another place for the tenant to move to would take some time.

### **Analysis**

Section 56 of the Act provides that a landlord is entitled to end a tenancy without notice to the tenant in situations where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, jeopardize a lawful right or interest of

another occupant or the landlord or cause extraordinary damage to the residential property

Any of the above must be met and, in addition, the landlord must also prove that 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.

However, the burden of proof in satisfying the criteria set out in section 56 of the Act to justify an immediate end to this tenancy without notice is quite high and the landlord is required to prove that the situation is dire.. As both parties have expressed that an end to the tenancy is the best solution, a mediated discussion ensued in regards to a mutually agreeable date and the parties reached the following consensus:

- On consent of the parties, the landlord will receive an Order of Possession effective 1:00 p.m. on Friday May 15, 2009
- The tenant will ensure that the landlord is paid the rent in full for March 2009 and will instruct the Ministry to release a cheque to the landlord for the month of April 2009.
- The tenant agrees that the landlord will retain the security deposit and interest paid by the tenant amounting to \$300.38 in consideration of the fact that the tenant will be remaining in the unit for one-half of the month of May 2009.
- In addition, the tenant will reimburse the landlord an additional \$50.00 for the cost of this application.
- The tenant will cease bringing a dog into the unit and will cooperate in assisting the landlord to show and re-rent the unit by granting access on 24 hours written notice, as required under the Act, and also by maintaining the unit in a clean and presentable way.

- Both parties made a commitment to keep the peace and to communicate in a polite and respectful manner.

**Conclusion**

Accordingly, based on the mutual agreement of the parties, I hereby order that this tenancy will end by consent on May 15, 2009 and I hereby issue an Order of Possession in favour of the landlord, effective May 15, 2009. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

April 2009

Date of Decision

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Dispute Resolution Officer