

# Dispute Resolution Services

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

## **DECISION AND REASONS**

**Dispute Codes:** *ET, FF*

### **Introduction**

This was an application by the landlord pursuant to section 56 of the *Residential Tenancy Act*, for an order to end the tenancy early and obtain an order of possession. The landlord also applied for the recovery of the filing fee pursuant to section 72.

The notice of hearing dated May 05, 2009 was served on the tenant by registered mail on May 06, 2009. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Does the landlord have cause to end the tenancy early?

### **Background and Evidence**

The tenancy began on September 15, 2008. The monthly rent is \$2,100.00. The tenant failed to pay rent for April and May and on May 05 the landlord served the tenant with a ten day notice to end tenancy.

The landlord visited the rental unit after providing a 24 hour notice and found five international students living in the unit. The landlord also noticed damage to a cabinet door, dent on the refrigerator, pet waste and cigarette butts in the balcony, damage to the hardwood floors and stains on the carpet.

The landlord has filed photographs of the above damage and has also filed letters from the Strata Council regarding the complaints from other tenants about garbage left on common property, pet waste washed off the balcony and oil stains in the parking lot.

The landlord has filed newspaper articles that describe the tenant as a con man who illegally sublets accommodation to foreign students.

The landlord has applied for an order to end the tenancy immediately because she found out that the tenant was subletting to foreign students under a false name and without her permission. The other reasons that the landlord has cited for an immediate end to the tenancy are that the tenant has not paid rent for April and May, is a con-artist and is “dangerous”. In addition the tenant has incurred monetary penalties from the strata council in the amount of \$919.00.

### **Analysis**

Section 56 (2) of the Act permits me to make an order ending a tenancy earlier than the effective date on a notice to end tenancy for cause, only if I am satisfied that the tenant has done one or more 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.

In addition to proving that there is cause to end the tenancy, in an application of this nature, the landlord must clear a second hurdle. 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”.

Section 56 is an extraordinary remedy that is reserved for situations in which there is a clear and present danger, or a genuine threat of imminent harm of such an extreme nature that it would warrant immediate intervention and removal of the tenant from the premises.

Based on the documentary evidence and testimony, I am not persuaded that it would be unreasonable or unfair for the landlord or other occupants of the residential property to wait while a one month notice to end tenancy for cause takes effect.

While the landlord may have established cause to end the tenancy upon one month's notice, the landlord has not established grounds for an extraordinary remedy such as ending the tenancy earlier than the effective date of a one month notice to end tenancy for cause. Since the landlord has not proven her case, she must bear the cost of filing this application.

### **Conclusion**

Accordingly, based on the evidence as presented at this hearing, I find that the landlord is not entitled to an immediate Order of Possession under section 56, and hereby dismiss this application.

Dated May 14, 2009.

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Dispute Resolution Officer