



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes ET, FF

### Introduction

This hearing was scheduled in response to the landlords' application for Dispute Resolution, in which the landlord has applied for an Order of Possession on an Early End to Tenancy and to recover the filing fee paid for this proceeding.

The landlord stated that the application and Notice of hearing was posted to the tenants' door and sent by registered mail on October 13, 2009. A witness statement has been provided to this effect and a Canada Post tracking number provided for the registered mail. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act* (Act).

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to end the tenancy early and gain an Order of Possession on the basis of his application pursuant to section 56 of the *Act*.

### Background and Evidence

This tenancy started on August 01, 2006. Rent for this unit is \$538.00 per month and is due on the 18th of each month. This is a seniors residential community in a 64 unit complex housed in a three story wood frame building. The tenant was served with a One Month Notice to End Tenancy for cause on October 29, 2009 and has made a separate application to cancel the Notice.

The landlord has applied for an Early End to Tenancy because the tenant is in breach of his tenancy agreement. The landlord testifies that the tenant removed his smoke alarm on two

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occasions. On the first occasion on August 10, 2009 which caused smoke to fill the corridor and a neighbouring tenant called the caretaker to investigate. The caretaker and neighbour entered the tenants unit and found the tenant had left a pan of rice cooking on the stove and had gone out. The caretaker of the building gave evidence and testifies that there was thick smoke and they got to the pan before it caught on fire. He found the tenant had removed the smoke alarm which is linked both into the buildings fire alarm and the fire hall. As the building alarm did not activate, the fire hall were also unaware and did not respond. The caretaker and the neighbour dealt with the smoke by opening windows and removed the pan onto the balcony. After this incident the fire inspector carried out an inspection of the tenants unit and found he did not have his smoke alarm in place. A new smoke alarm was given to the tenant.

The landlord testifies that on the second occasion the tenants neighbour living upstairs saw smoke coming from the tenants' window. He called the caretaker and spoke to the caretakers' wife as the caretaker was out at the time. The caretakers' wife asked the tenant to go and see where the smoke was coming from. The landlord has not provided a witness or any evidence concerning this incident. The landlord testifies that after these incidents the tenants were asked to sign revision to their tenancy agreements regarding keeping all smoke alarms connected. During the hearing the landlord confirms that the tenant has now signed this revision.

The landlord has also raised other issues which showing how the tenant has violated his tenancy agreement. The landlord testifies that the tenant has used a Bar-B Que on his balcony in direct contravention of his agreement and has been abusive to the office administrator.

The tenant testifies that he did disconnect his smoke alarm as it was so sensitive and kept going off. He also confirms he did leave a pot of rice cooking on the stove he went out for a short while and turned the heat down low. The tenant states he is now aware of the risk involved in removing the smoke alarm and has signed a revision to his agreement that he will not remove his smoke alarm in the future.

The tenant testifies that he is unaware of the second incident mentioned by the landlord and his witness and states that he has no knowledge of this incident happening at his unit.

The tenant testifies that he did get into a disagreement with the office manager about his parking space. The tenant also confirms that he does use a Bar-B-Que on his balcony and as it is electric and not propane he was given permission to use it by the previous caretaker as it is not a risk to the building.

## Analysis

Section 56(2) of the *Act* authorizes me to end a tenancy earlier than the tenancy would end if Notice to End Tenancy were given under section 47 of the *Act* and grant an Order of Possession for the rental unit if the tenant or persons 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
  - (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.

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(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

The landlord is unable to conclusively prove that the tenant removed the smoke alarm on more than one occasion after being warned not to do so. The landlord has not provided a witness to testify to the alleged second incident and therefore it is just superstition that the smoke was coming from the tenants unit on the second occasion. The tenant has now signed a revision to the tenancy agreement agreeing to not remove the smoke alarm in the future.

I find that the landlord has provided insufficient evidence, pursuant to section 56 of the *Act*, to show that the tenant has put the landlords property at significant risk, that he has caused or is likely to cause damage to the landlords property, that he 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 that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a Notice to End Tenancy under section 47 to take effect. Therefore, I find that one incident of smoke (although it may have been distressing to tenants at the time) it has not caused extraordinary damage to the property. Although the tenants' actions may have potentially caused a fire this did not happen and the tenancy may continue at this time.

With regard to the other issues raised by the landlord concerning the tenants' verbal abuse of the office administrator and the use of the Bar-B-Que I find neither of these incidents would warrant an Order for an Early End to Tenancy. It would not 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. Therefore, these sections of the landlords claim are dismissed without leave to reapply.

If the tenant does remove the smoke alarm again after being warned not to do so and after signing an agreement not to do so, the landlord is at liberty to reapply for an Early End to



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Tenancy at that time. Therefore, this section of the landlord's application is dismissed with leave to reapply.

The landlord has issued a One Month Notice to End Tenancy for Cause on October 29, 2009. The tenant has disputed this notice and another hearing is due to be heard in December, 2009.

## Conclusion

The landlords' application for an Early End to Tenancy is dismissed with leave to reapply in the event the tenant removes the smoke alarm again. The tenancy may continue at this time.

As the landlord has not been successful with their application they must bear the cost of filing their own application.

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: November 30, 2009.

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Dispute Resolution Officer