



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This matter dealt with an application by the Landlord for an order ending the tenancy earlier than it would end if the Landlord was required to serve the Tenant with a One Month Notice to End Tenancy for Cause and wait for the applicable notice period to expire. The Landlord also applied to recover the filing fee from the Tenant for this proceeding.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy early?

### Background and Evidence

This tenancy started on October 1, 2007. The Landlord said that on or about October 21, 2009, he received a written complaint from another tenant who claimed that he was confronted by a stranger on the elevator in the rental property approximately a week earlier. The other tenant said that this individual told him he was having withdrawal symptoms from drugs and claimed he was going to the Tenant's unit to get drugs. The other tenant also claimed that the Tenant's roommate was using and selling drugs and that this was not the first incident where "these type" of people had entered the rental property looking for the Tenant's rental unit.

The Landlord's witness who attended the hearing gave evidence that he believed the Tenant's roommate was involved in drug activity. In particular, he claimed that the Tenant's roommate had been arrested for possession of a knife in June 2009 and charged with possession of an illegal drug in August 2009. The Landlord's witness admitted that neither of these incidents took place on the rental property. However, the Landlord's witness claimed that in February of 2008, the Tenant's roommate was assaulted at the rental unit by someone who sprayed him with pepper spray and he believed this was drug related.

The Landlord said he had evicted another tenant who he believed had been selling drugs on the rental property. The Landlord said that he was surprised when he subsequently saw drug activities on the rental property and believed it was because the Tenant's roommate was selling drugs. The Landlord claimed that the Tenant's

roommate was not authorized to live in the rental property. The Landlord also claimed that his caretaker was assaulted in August of 2009 but he could not say for sure if it was related to the Tenant's roommate. The Landlord argued that it was a material term of the tenancy agreement that it was "crime free housing" and that the Tenant's roommate was not only an unauthorized occupant but he is a threat to the safety of other occupants in the rental property.

The Tenant claimed that her roommate (of the past year and a half) was her caregiver and denied that he used or sold drugs. The Tenant also denied that her roommate was charged for possession of drugs or that the pepper spray assault occurred at the rental unit. In particular, the Tenant claimed that the incident occurred somewhere else but that the police attended the rental property later because of the noise. The Tenant also argued that the caretaker was assaulted by another occupant of the rental property over his attempt to prohibit dogs.

The Tenant admitted that visitors come to her rental unit late in the evening on occasion but claimed that was because they worked late. The Tenant claimed that she is an anti-drug advocate and that she would not tolerate the use or sale of drugs from her residence. The Tenant argued that the complaint made by another (anonymous) tenant of the rental property was based solely on hearsay and unreliable.

The Tenant's witness, however, claimed that while she had never seen the Tenant's roommate use or sell drugs, she believed that he was a drug user based on his physical appearance and conduct. In particular, the Tenant's witness claimed that the Tenant's roommate would go to the bathroom frequently throughout the day claiming he needed to take a shower because he was cold. On one occasion, the Tenant's roommate claimed that she found a small amount of blood spatter on the bathroom wall and ceiling which she believed came from the Tenant's roommate using a syringe.

The Tenant's advocate also claimed that while the Tenant's roommate offered her support in the past, she had "misgivings" about him now and thought it would be in the best interests of the Tenant if he moved out.

## Analysis

Section 56 of the Act says that a Landlord may apply to end a tenancy earlier than it would end if a Notice to End Tenancy for Cause under s. 47 of the Act had to be given.

In order to succeed on an application under s. 56, the Landlord must show that one or more of the grounds set out in subsection 56(2) of the Act exists **and** that it would be unreasonable or unfair to have to wait for a Notice to End Tenancy under s. 47 of the

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Act to take effect. In other words, the Landlord must show that the conduct complained of is so serious or urgent that it warrants eviction on an expedited basis. As a result, orders granted under s. 56 of the Act are reserved for those cases in which there is an imminent threat of danger to the person or damage to property.

While the Tenant may be in breach of a term of her tenancy agreement not to have an unauthorized roommate, I find that this is not a ground listed in s. 56(2) of the Act. I also find that there is insufficient evidence that the Tenant's roommate is using or selling drugs on the rental property. The only evidence alleged by the Landlord was that of an anonymous complainant who based his or her complaint on statements of someone they found wandering around the rental property and for that reason I find that this evidence is unreliable. Furthermore, the evidence of the Landlord's witness was that the Tenant's roommate had been charged (but not convicted) with possessing a drug off of the rental unit property. The Landlord's witness also admitted that the pepper spray incident that occurred almost 2 years ago originated somewhere else but he believed "it ended" at the rental unit.

Consequently, I find that the Landlord has not provided sufficient evidence to satisfy the requirements of s. 56. That is to say, I find that the Landlord has not shown that one of the grounds set out in s. 52(2) exists. Furthermore, I find that the Landlord has not shown that there is an imminent threat to the safety of other occupants of the rental property or of a risk of damage to the rental property. As a result, the Landlord's application for an early end to the tenancy is dismissed without leave to reapply.

## Conclusion

The Landlord's application is dismissed without leave to reapply. 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 12, 2009.

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Dispute Resolution Officer