

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to end the tenancy early and obtain an Order of Possession.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally on July 29, 2010.

The Landlord, the Tenant, and the Tenant's Legal Counsel appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Landlord entitled to end the tenancy early in accordance with section 56 of the *Residential Tenancy Act*? If so, is the Landlord entitled to an Order of Possession pursuant to section 56 (1)(b) of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the month to month tenancy began on January 1, 2006 with rent payable on the first of each month in the amount of \$349.00.

The Landlord argued that he had no choice but to apply to end the tenancy early in order to receive an expedited hearing date which would allow the Landlord's renovation project to proceed. He argued that the Tenant has breached section 19 of the tenancy agreement which grants the Landlord access to the rental unit after issuance of proper notice in accordance with the *Act*.

The Landlord advised that they had undertaken a large “fixed price contract” which required access to the rental unit throughout the day and the Tenant refused access to his unit during morning hours. He argued that proper notice was posted on the Tenant’s door yet the Tenant still refused access to workers. He claims the Tenant has a history of refusing access in the past, that this has been an ongoing issue with this Tenant, and that he believes he had to go the path of requesting an end to the tenancy in order to get this project completed on time and on budget. He confirmed that since making this application the Tenant has cooperated and allowed access to the rental unit.

Counsel for the Tenant requested an opportunity to settle the matter and asked that the Landlord withdraw his request to end the tenancy and in return the Tenant would cooperate with access to the unit. Counsel further advised that the Tenant is hard of hearing and prefers to deal with issues over the telephone and asked if the Landlord could call the Tenant prior to when access is required to the unit.

The Landlord argued that notices to enter the rental units are posted in accordance with the Act and they are not able to accommodate just one Tenant with telephone calls in addition to posting the notices. In closing the Landlord stated that he suspected that he did not have enough evidence for the early end of tenancy but that he did what he had to do to get the job done. He requested that the Tenant be advised that he must follow the Act.

The Tenant confirmed that he understands that the Landlord is entitled to access the rental unit during the prescribed hours set out in the Act.

### Analysis

All of the testimony and documentary evidence was carefully considered.

In making an application for an early end to this tenancy the Landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of

the landlord and placing the landlord's property at significant risk; and by proving that it would be unreasonable or unfair to the Landlord or other occupants to wait for a one month Notice to End Tenancy for cause under section 47 of the *Act* to take effect.

I am not satisfied that the Landlord has met the burden of showing that it would be unreasonable or unfair for a one month Notice to End Tenancy to take effect. I am satisfied that if the Tenant continues to refuse access to the rental unit that there may be cause to end this tenancy pursuant to section 47 of the *Act*; however, I do not find it is unfair or unreasonable for a one month Notice to End Tenancy to take effect.

I make this finding as I am satisfied that the Tenant has not seriously jeopardized a lawful right or interest of the Landlord in a manner that requires an immediate end to a tenancy. That being said, I am satisfied that the Tenant has prevented access to the rental unit after receiving written notice of entry, however this is not such a significant risk as to warrant the immediate end to the tenancy.

The notice of entry provided in evidence indicates the Landlord had requested entry to the rental unit between the hours of 7:30 a.m. and 5:00 pm. I note that section 29 of the *Act* requires that the Landlord must provide at date and time of entry to the unit which must be between the hours of 8 a.m. and 9 p.m.

While it can certainly be argued that preventing the Landlord access to the rental unit is a breach of the terms of the tenancy I am not satisfied that this breach is so significant as to warrant the immediate end of the tenancy. At the time of the hearing I find that there was insufficient evidence to support the allegation that the Landlord's lawful right or interest was seriously jeopardized. The Landlord may well be able to show that there are grounds to end this tenancy pursuant to section 47 of the *Act* after service of a one month's Notice to End Tenancy; however, I am not satisfied that the circumstances warrant an early end to the tenancy, therefore I dismiss the Landlord's application .

As the Landlord has not been successful with their application I decline to award the Landlord recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's application, 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: August 17, 2010.

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Dispute Resolution Officer