



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlord's application for an early end to tenancy and request for an Order of Possession. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. I determined that a second evidence package received by the Residential Tenancy Branch from the landlord was not served upon the tenants and I did not consider the evidence in making my decision. All other documents were confirmed as received and I have considered those documents in making this decision.

The tenants requested an adjournment in order to obtain police reports. The adjournment request was denied as this hearing is with respect to an application for an early end to tenancy. To grant an adjournment would defeat the purpose of this proceeding. The hearing proceeded and the tenants were given the opportunity to state what they believed the police reports would reflect.

### Issues(s) to be Decided

Has the landlord established sufficient grounds to end the tenancy early as provided by section 56 of the Act?

### Background and Evidence

I heard undisputed testimony as follows. The tenants paid and the landlord accepted a security deposit and rent from the tenants on July 23, 2010. The tenants moved in on or about July 26, 2010. The rental unit is a ground level suite with the landlord living on the upper floor. A utility room that accommodates the furnace and hot water tank is located in the rental unit. Shortly after the tenancy began a dispute about the payment of rent for August 2010 ensued. The landlord also had the tenant's car towed off the property.

The landlord provided the following reasons for requesting an early end to tenancy:

1. Physical violence by the tenants on two occasions:
  - a. The male tenant pushed the landlord into the furnace upon discovering the landlord in the rental unit; and,
  - b. The female tenant grabbed the landlord around the neck when the female tenant discovered the landlord in the rental unit and a locksmith had to peel the tenant's fingers from the landlord's neck which resulted in bleeding from the landlord's neck.
2. On August 2 or 4<sup>th</sup> unsavoury people came to the residential property at approximately 3:00 a.m. to look for the male tenant. Fighting and crying could be heard outside and splinters of wood found on the driveway the next day.
3. The landlord has had her tires slashed three times and her wheel lug nuts loosened. The landlord supplied an invoice showing loose lug nuts on one tire.
4. The tenants have cut off the supply of hot water to the residential property.
5. The tenant sprayed the landlord in the face with a water hose.
6. The landlord has moved off the property as she is fearful of the tenants.

The tenants responded to the above allegations by stating the landlord has made false allegations against them and that the police have attended the property eight times since the tenancy began. The tenants allege that the police have stated that the

landlord will be charged with mischief if the landlord keeps calling the police. The tenants requested that I talk to the police and view the police reports to corroborate their assertions that the landlord does not act rationally and is not in touch with reality. Further, the tenants allege the landlord has illegally entered their unit and towed the tenant's vehicle after giving the tenant a spot to park his vehicle.

In response to the above allegations the tenants stated:

1. With respect to the physical altercations:
  - a. The landlord broke the door handle, began making accusations against the tenant and then flew at the male tenant causing him to fly into the furnace; and,
  - b. The female tenant denied grabbing the landlord by the neck but demanded that the landlord to leave the rental unit.
2. No persons visited the tenants at 3:00 a.m. or caused a disturbance on the property. The tenants requested the manager of the adjacent apartment building be called to testify that nothing was noted on their security log on those nights.
3. There is no evidence to suggest the tenants are responsible for slashing the landlord's tires or loosening lug nuts.
4. The tenants deny cutting off the hot water as they also suffer from a lack of hot water.
5. The landlord disconnected the hose herself when the tenant was using it.
6. The landlord and the landlord's family members have been at the residential property but have to use bathroom facilities elsewhere as there is no hot water at the property.

The landlord requested that I call her daughter as a witness to the first physical altercation by the furnace. I called the telephone number provided by the landlord and received a voicemail recording. Accordingly, I was not able to speak to that witness.

The tenants requested I call the locksmith who was present during the altercation between the female tenant and the landlord. I called the locksmith and he provided testimony to which both parties were allowed to question. The locksmith testified that he attended the unit with the landlord and he noticed the Notice to Enter had an incorrect time on it. After knocking, the landlord and locksmith entered the unit anyways as it was unlocked. The locksmith noticed the male tenant sleeping. Shortly thereafter the female tenant came home and was angry that the landlord was in the unit. The female tenant put her hand on the landlord's neck and shoulder and gave the landlord a push towards the door, telling the landlord to leave. The locksmith described the altercation as very, very minor and that the tenant's actions would not have caused bleeding. The locksmith denied that he had to peel the tenant's fingers off the landlord's neck. Rather, the locksmith stated that he put his hand between the two women and told them to stop it. Subsequently, the locksmith suggested the landlord become familiar with the proper way to enter a rental unit.

Upon enquiry, the landlord acknowledged that the tenants have not been charged with assault by the police despite the police being called on both occasions. Rather, the landlord indicated the police suggested she not press charges as they questioned the landlord's right to be in the rental unit.

As evidence the landlord provided copies of receipts issued to the tenants, photographs of the wounds she allegedly suffered during the altercation with the male tenant and a written synopsis of events. The tenants provided a copy of their request for the police reports.

### Analysis

Section 56(2) of the Act permits a Dispute Resolution Officer to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

(a) the tenant or a person 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.

[my emphasis added]

Upon hearing from both parties it is clear that the tenancy relationship is extremely toxic and that both parties will benefit when the tenancy ends. However, the only matter before me to determine is whether the tenancy should end immediately and the test for establishing that is as outlined above.

The burden to prove the tenants have acted in such a way as to warrant an order to end the tenancy early is upon the landlord. For much of the hearing I was provided disputed versions of events. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, it is important to note that without further evidence, the party with the burden of proof has not met the onus to prove their case.

I have relied heavily upon the locksmith's witness testimony as I found him to be an unbiased and highly credible witness. I found the witness testimony did not support the landlord's version of what happened between the landlord and the female tenant. Since the landlord's version of the event was not supported by the witness testimony in this instance I find I cannot rely upon the landlord's description of events with respect to the altercation with the male tenant or the other allegations.

Upon hearing from the witness and in reading the landlord's submissions I am of the position that the landlord has a tendency to exaggerate. I am also of the position that the landlord's actions are largely responsible for this toxic tenancy relationship. I find the tenants would likely be aggravated by finding their vehicle towed from the property and finding the landlord in the rental unit without proper notice given to the tenants.

I also found the number of police visits to this property to be extremely high. In considering that the tenants have not been charged with assault and the locksmith testimony I find the tenants' allegation that the landlord is making nuisance calls to the police to have some merit.

I also found the tenants' submission that they have not cut off the hot water supply since it also impacts them is the more reasonable submission the absence of any evidence to support the landlord's allegation that the tenants have cut off the hot water supply.

While the landlord provided a copy of an invoice showing lose lug nuts on her vehicle I found it inconsistent that the landlord would not provide invoices showing tire replacement or repair of tires due to slashing of the tires.

In light of the above, I find the landlord has not satisfied me that an order to end the tenancy early is warranted at this time. Rather, until such time the tenancy legally ends, I suggest the landlord familiarize herself with section 29 of the Act in order to the hot water tank inspected. Section 29 provides for the landlord's restricted right to enter the rental unit.

I also caution the tenants that despite aggravating factors, the tenants do not have the right to engage the landlord in a threatening or physical manner. Future instances of such activity may be grounds to end the tenancy in the future.

### Conclusion

The landlord's request for an early end of tenancy and Order of Possession is denied and this application has been dismissed.

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 19, 2010.

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Dispute Resolution Officer