



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's request to end this tenancy early pursuant to section 56 of the *Act*. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the tenant's breach of the tenancy agreement, *Act* and regulations been so significant as to entitle the landlord to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

### Background and Evidence

This tenancy began on December 1, 2010 for the monthly rent of \$1,100.00 and a \$500.00 security deposit paid on November 15, 2010.

The landlord is seeking an early end to this tenancy on the basis that the tenant or a guest permitted on the property by the tenant have:

- Unreasonably disturbed other occupants by being loud and smoking marijuana; and
- Have allegedly been engaged in illegal activities.

The landlord and the landlord's witness stated that the tenant and his roommate have allegedly been videotaped stealing property from the strata parking area on December 26, 2010. The matter has been brought up with the police and an investigation is underway.

The strata provided the landlord with a letter dated January 6, 2011 requesting that the landlord begin proceedings to have the tenant evicted. The strata states in this letter

that multiple complaints have been received about loud music and banging in the apartment and raise the issue that the tenant has allegedly engaged in illegal activities on the strata property.

The strata deactivated the tenants FOB, which limits the tenant's ability to access the property. The landlord brought in a council member of the strata as a witness to this proceeding. The witness confirmed that the FOB had been disabled and could only state that evidence had been provided to the police respecting allegations that the tenant was involved in illegal activity on the strata property. The witness stated that he could not divulge any further information. The witness also confirmed that the strata council has received numerous complaints about noise disturbances from the tenant's rental unit.

The landlord stated that the tenant has allegedly stolen a pressure washer from the parking garage and this theft is under investigation. The landlord also stated that the tenant has changed the locks to the rental unit and will not allow the landlord access.

The tenant denied the landlord's allegations and submitted that the locks to the unit were changed because the landlord accessed the rental unit without the tenant's authorization. The landlord confirmed that the door of the rental unit was opened but denies that the rental unit was accessed. The landlord did not provide 24 hour written notice in advance as required by the *Act*.

The tenant also stated that he has not had anyone approach him about complaints with noise or other disturbances. The tenant also complained that his access to the rental property has been limited illegally.

### Analysis

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the *Act* to end this tenancy early.

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be remedied by issuing notice under section 47 of the *Act*. Although the

landlord has alleged illegal activity, insufficient evidence was provided to confirm this allegation. No evidence was provided linking the tenant to the alleged theft. Although the landlord has indicated that the police are investigating the matter, this is not sufficient to conclude that the tenant was responsible or that the tenancy should end as a result.

Finally, the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice under section 46 or 47 to take effect.

I also find that the landlord is responsible for the restriction of the tenant's access to the rental unit by way of the strata turning off the FOB to the building. This is contrary to section 30 of the *Act* which states that a landlord must not unreasonably restrict access to the residential property. In the absence of concrete evidence that the tenant was engaged in illegal activities, I am not satisfied that the landlord had any grounds to allow the strata council to limit the tenant's access and I Order the landlord to immediately restore the tenant's access. Failure to comply with this Order could result in the landlord owing the tenant for damage or loss suffered due to a breach of the *Act*.

I also find that the landlord has failed to comply with section 29 of the *Act* which restricts the landlord's right to enter the rental unit. As a result of the landlord's attempt to enter the rental unit without proper authorization the tenant decided to change the locks to the rental unit. I find that this was not reasonable and I Order the tenant to restore the original locks to the rental unit by **January 14, 2011 at 5:00 p.m.** If the tenant fails to comply with this Order, I authorize the landlord to change the locks to the rental unit without the tenant's permission and to provide the tenant with a new key to the rental unit. The landlord may seek the cost of changing the locks from the tenant by filing an application for Dispute Resolution.

If the landlord requires access to the rental unit for any other reason, the landlord must provide written notice with reasons at least 24 hours before hand pursuant to section 29 of the *Act*.

Conclusion

I have denied the landlord's application and dismiss it without leave to re-apply. I have determined that the landlord has not provided sufficient evidence to find that this tenancy should end early pursuant to section 56 of the *Act*.

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: January 18, 2011.

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Residential Tenancy Branch