



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

ET, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant.

Both the landlord and the tenant appeared and gave testimony.

### **Issue(s) to be Decided**

Is the landlord entitled to end the tenancy without notice pursuant to section 56(1) of the Act?

### **Preliminary Issue: Submission of Evidence**

The applicant landlord had submitted an evidence package containing written testimony from the landlord that was submitted to the file on March 11, 2011. However, the tenant stated that this written statement had not been served on the tenant.

I note that the information contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible..*" Section 88 and 89 of the Act specifies how and when documents must be served.

In addition to the above, Residential Tenancy Rules of Procedure, Rule 3, requires that the applicant must submit evidence to the Residential Tenancy Office and serve all evidence being relied upon to the respondent at the same time as the application is filed or at least (5) days before the dispute resolution proceeding. In the case before me, I find that, the landlord's evidence was submitted to the Dispute Resolution file before the deadline but was never served on the respondent tenant at all. Therefore, I found that I must decline to accept or consider any evidence that was not properly served on the other party. However, the landlord was permitted to read the contents of the landlord's written statement into evidence.

The landlord also testified that they had attempted to obtain a copy of a police report that is critical to their application, as evidence to support the request for an order to end the tenancy without notice. The landlord stated that the process in place to get the police report released takes some time and they were not able to procure this key piece of evidence prior to the hearing, through no fault of their own.

### **Background and Evidence**

The tenancy began on May 1, 2009 and the rent was \$900.00. A security deposit of \$450.00 was paid. The tenant lives in the lower suite and the landlord lives above.

The landlord testified that the Order of Possession without Notice under section 56 of the Act was being sought under the advice of police, who had attended to deal with an incident in which alleged threats were uttered by the tenant.

This occurred on March 14, 2011 at approximately 9:00 p.m. According to the landlord, the tenant had telephoned to complain about noise being made by the landlord's child playing ball in the house. The landlord stated that after apologizing to the tenant, she stopped the children from this activity and had them go into another room. The landlord testified that she had commenced vacuuming the floor when the tenant came to the door in an aggressive state. The landlord testified that words were exchanged and the tenant threatened the male landlord with physical violence. The landlord testified that the tenant also had aggressive body language and yelled at the female landlord warning her that he would punch her. The landlord testified that the tenant also threatened to burn down their house and shoot them. The landlord stated that the tenant's conduct has left them in a state of fear and the landlord seeks to terminate this tenancy without further delay.

The tenant denied making any threats of harm to the landlord or the landlord's family whatsoever and in fact testified that the landlord was aggressive towards him. The tenant admitted being concerned about the noise level as it affected his child who was trying to sleep. The tenant stated that he believed that the landlord was purposely making excessive noise in reprisal for the tenant's refusal to agree to an "open house", to show his suite. The tenant also accused the landlord of attempting to enter his suite without proper written notice.

### **Analysis**

Section 56 of the Residential Tenancy Act provides that a landlord may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would otherwise end if a One Month Notice to End Tenancy was given under section 47 [*landlord's notice: cause*].

Before issuing an Order ending the Tenancy under section 56 a Dispute Resolution Officer must be satisfied under section 56(2) that the following has been proven:

1. a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;

b) Has engaged in illegal activity that:

- has caused or is likely to cause damage to the landlord's property,
- 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
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

c) Has caused extraordinary damage to the residential property,

**AND**

2. 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.

In this instance the landlord's verbal testimony about the tenant's threats of physical harm to the landlord, was vehemently disputed by the tenant.

It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, that the compensation being claimed as damages is justified under the Act.

However, because of the amount of time required for the landlord to obtain a copy of the police report about the incident in order that it be placed into evidence, I find that the landlord's evidence only consisted of conflicting and disputed verbal testimony.

In the absence of independent documentary evidence, I find that I do not have sufficient proof necessary to grant an order of possession. I find it is critical that the landlord

meet its added burden of proof by providing adequate evidence beyond mere verbal allegations to support this application. Based on the evidence before me, I find that the landlord has not provided sufficient evidentiary support to meet the criteria specified in section 56(2)(a) of the Act.

That being said, I find that the landlord's ability to obtain the evidence in time for the hearing was beyond the landlord's control. As it is not possible to adjourn this matter without knowing exactly when the police record will be available, I hereby dismiss the landlord's application with leave to reapply once the evidence in question has been released to the landlord by the police.

### **Conclusion**

Accordingly, I hereby dismiss the landlord's application with leave to reapply.

I hereby order that the parties will restrict all communications between them to written form and refrain from verbal communication unless absolutely necessary.

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: March 2011.

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Residential Tenancy Branch