



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with an application by the landlord for an early end of tenancy and an order for possession. The landlords and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Should there be an early end of tenancy? Is the landlord entitled to an immediate order for possession?

### Background and Evidence

The rental unit is a basement suite in a house in Surrey. The upper suite is rented to other tenants. The tenancy began on March 1, 2012. In the application for dispute resolution the landlord said that:

Tenant has been causing issues and is an immediate threat to landlord and other tenants. Tenant has assaulted landlord and threatened to beat up (landlords)  
Threatens upstairs tenant and calls them child molesters. (reproduced as written)

The landlords said that the tenant left an obscene drawing in the mailbox of the upstairs tenants and said that he has repeatedly harassed the upstairs tenants and made inappropriate comments to their children by telling them to call him "Grandpa". The landlords claimed that the tenant turned off the heat and hot water in the rental property that serves the upstairs tenants. The landlord claimed that the tenant gave a notice that he would move out on May 1<sup>st</sup> and when the landlord attended at the rental unit after 1:00 P.M. on May 1<sup>st</sup> the tenant assaulted her.

The landlords said the tenant failed to pay May rent and they have given him a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause.

The tenant denied the landlord's allegations. He said that the police contacted him about the claim that he left an obscene drawing in the mailbox and they told him that they accepted that he was not responsible for the alleged incident. The tenant testified that he has been unreasonably disturbed by the upstairs tenants; they have played loud music early in the morning, left one of their children locked in a room adjacent to the tenant's suite for several hours where the child's crying disturbed the tenant. The tenant said that he has been disturbed by the upstairs tenant's dog that, at 4:00 A.M., was locked in a crate in the kitchen above his bedroom and was constantly whining. The tenant testified that he is 60 years old with some physical difficulties. He said that he does not get into physical confrontations and he noted that the male tenant upstairs is much younger and more fit than he is.

The tenant said that he has turned off the hot water in the rental property, but this was in retaliation to the upstairs tenants' action in turning off the supply of electricity to the rental unit. The tenant said that rent was not paid for May, but this was because the landlords returned the rent cheque that they received on his behalf from the provincial government. He said that the landlord attended at the rental unit on May 1<sup>st</sup> and changed the locks. The tenant denied that he assaulted her. He did contact the Residential Tenancy Office and the landlord returned the original lock.

At the hearing the tenant acknowledged that the tenancy had become unworkable. He said that he intended to move and was prepared to move out of the rental unit by the end of May.

After I heard evidence from the landlords and from the tenant, the landlord told me that the upstairs occupants were present on the call and had been listening throughout the hearing. I declined to hear from the upstairs occupants because the landlord did not make me aware that they were on the call and, not having been excluded from the hearing, I decided that their testimony would have little value.

### Analysis and conclusion

Under section 56(2)(b) of the Act, in order to establish a claim for an early end to tenancy, the landlord must establish that "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" (emphasis mine). I am not satisfied that this unreasonableness or unfairness exists. On the evidence presented, there have been several incidents between the tenant and the upstairs occupants of the rental property. There is no doubt that there has been conflict between the tenants, but on the evidence presented, I am not satisfied that the tenant should be blamed as the

instigator. The landlord claimed to have been threatened and assaulted by the tenant, but I did not find the landlord's testimony convincing. What is clear is that on May 1<sup>st</sup> the landlord attended and sought to change the locks without authority to do so and when thwarted, filed this application on the next day. The facts as I have found them do not justify the use of the extraordinary remedy of ending the tenancy without notice and accordingly I dismiss the landlord's application. The tenant has agreed to move at the end of May; the landlord at the hearing accepted that proposal; accordingly I grant the landlord an order for possession effective May 31, 2012, after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord is at liberty to make a claim for unpaid rent and if the tenant believes he has a claim he is free to make an application for dispute resolution. The tenant's security deposit must be dealt with in accordance with the Act at the end of the tenancy.

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: May 11, 2012.

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Residential Tenancy Branch