



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlords' application for dispute resolution seeking to end the tenancy with the tenant pursuant to section 56 of the Residential Tenancy Act (the "Act").

The parties and the tenant's advocate appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to 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 landlords to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

### Background and Evidence

This one year, fixed term tenancy began on May 1, 2011, monthly rent is \$575.00 and the tenant paid a security deposit of \$275.00 on or about April 8, 2012.

The rental unit is the basement suite of the landlords' house.

In support of their application, the landlord testified that the tenant has smoked in the rental unit, in violation of the tenancy agreement. The landlord said this was addressed with the tenant, with positive results.

Another incident complained of by the landlord was when the tenant allegedly sat outside in his boxer shorts, covered by a blanket. The landlord stated that her husband asked the tenant to go inside and put some clothes on. The landlord stated that the

tenant then began chasing her husband and swearing at him. The landlord said that the tenant brandished a knife and uttered threats, which resulted in a call to the police.

The landlord acknowledged that the knife turned out to be a butter knife, perhaps from the tenant cutting strawberries.

The landlord further said that the police told her the tenant was using heroin and that they were advised to keep away from the tenant.

Additionally, the landlord stated that her family was fearful of the tenant, and that as a result, her children were unable to go to school. Later on when questioned, the landlord stated that her children were in school, that they had just missed the day after the incident in question.

The landlord said that when the tenant is high on drugs, he doesn't know what he's doing.

The landlord requested an order of possession.

In response, the tenant's advocate stated that the tenant is not using drugs, which is why he acted like that. The advocate said that the tenant is undergoing complete withdrawal from his drug dependency, instead of a gradual withdrawal to complete the process much more quickly.

The advocate said that the drugs were legal prescription drugs, which he had been prescribed due to a near fatal accident two years prior. The tenant stated that he informed the landlords he was going to be sick. The tenant said that this lead the landlords to believe he was contagious, and then when he explained that he was withdrawing from drugs, they incorrectly assumed the drugs were illegal drugs.

The tenant submitted this lead the landlords to lay the groundwork for evict him due to his truthfulness.

The tenant denied threatening the landlords or their family, and that rather than being arrested, the police took him to the hospital for his own safety.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed and considered all relevant evidence; however, not all evidence and testimony has been specifically mentioned in this Decision.

I deny the landlords' application as I find that the landlords have 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 to end a 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 notices under sections 46 or 47 of the *Act* and then filing an application for Dispute Resolution based on those notices.

In reaching this conclusion, I find the landlords submitted insufficient evidence, which would have verified more their version of events, as the tenant offered an equally probable version of events, particularly regarding the police reports. Contradictory evidence does not sufficiently meet the landlords' burden of proof.

Another incident for which the landlords took exception was that the tenant was outside of his rental unit in shorts, covered with a blanket. I do not find this to any cause to end the tenancy under the *Act* or tenancy agreement.

I was also particularly influenced by the landlord's own contradictory testimony, in one instance stating that she was told by the police the tenant was using heroin, and then saying that she did not hear this from the police, but from the tenant.

The landlord also stated that her children were not in school, and when questioned further, the landlord said that they were in school, having missed just one day due to being afraid, without being able to say why missing school due to being afraid at home was the reason.

I therefore find that the landlords have not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlords to wait for a notice under section 46 or 47 of the *Act* to take effect.

As an explanation to the landlords should they now want to seek enforcement of a Notice to End Tenancy, they are advised that the notice ending the tenancy, in the form of a 30 day eviction notice, issued to the tenant is not in the proper form containing the requirements of the Act and is therefore invalid and unenforceable.

### Conclusion

I have denied the landlords' application and dismiss it without leave to re-apply. I have determined that the landlords have not demonstrated that it would be unfair or unreasonable for the landlords to wait for a notice to end tenancy to take effect under sections 46 or 47 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: June 08, 2012.

---

Residential Tenancy Branch