



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant confirmed that the landlords handed him a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on May 19, 2012. The tenant also confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on May 31, 2012. I am satisfied that the landlords served these documents to the tenant in accordance with the *Act*.

Although the landlords testified that they sent their evidence package to the tenant, the last of this evidence, a DVD-R, was not received by the Residential Tenancy Branch until June 5, 2012, a few days before this hearing. The tenant testified that he had been unable to properly play this DVD, which only revealed a photograph of the landlords' children. Under these circumstances and the late nature of this evidence, I advised the parties that I would not be considering this late submission of evidence by the landlords.

At the commencement of the hearing, the tenant asked for an adjournment of the hearing of the landlords' application to be reconvened at the June 14, 2012 hearing scheduled to consider his application to cancel the landlords' 1 Month Notice. He said that he was not well and was calling from the hospital where he was awaiting treatment. The landlords rejected this request for an adjournment as they maintained that this was a delaying tactic.

Since the landlords applied for an early end to this tenancy because they did not feel that this situation could wait until the scheduled June 14, 2012 hearing of the tenants' application for dispute resolution, the very purpose of their application would be

frustrated if I were to grant the tenant's request for an adjournment to June 14, 2012. My decision to proceed with the landlords' application would only adversely affect the tenant if I were to allow the landlords' application and end this tenancy early. I decided to proceed to hear oral testimony from the parties to determine if the parties were interested in resolving this dispute by way of a settlement agreement or if there were grounds whereby the landlords could obtain an early end to this tenancy.

Issues(s) to be Decided

Are the landlords entitled to end this tenancy early and obtain an Order of Possession on that basis? Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

This periodic tenancy for the lower suite in this two unit property commenced on June 1, 2011. The landlords and their two young children live in the upper unit above the tenant's suite. Monthly rent is currently set at \$850.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$425.00 security deposit paid on April 19, 2011.

Although neither party thought it relevant enough to the landlords' current application to provide a copy of the 1 Month Notice for consideration during this hearing, I understand from the documents the landlords did submit that they issued their 1 Month Notice for Cause. The tenant did not submit any written evidence for this hearing.

The landlords described their request for an early end to this tenancy in the following terms in the Details of the Dispute section of their application for dispute resolution:

*We have evicted M due to our feeling unsafe and disrespected given his combative and aggressive attitude! (see notes) Since serving eviction his harassment has escalated significantly.*

(as in original)

In their written evidence, the landlords identified a number of incidents that make them feel unsafe if this tenancy were to continue. They maintained that since they issued the tenant the 1 Month Notice he has been making excessive noise designed to disturb them and their young children. They also provided examples of situations where they maintain the tenant has gone out of his way to cause problems for them. At the hearing, the female landlord added her oral testimony to the written evidence the landlords provided regarding the tenant's recent practice of running hot water late at night in an effort to disturb and cause additional costs to the landlords. Issues surrounding the tenant's method of access, egress and storage of his motorcycle were

also raised in the landlords' written evidence. The landlords testified that their safety concerns have escalated to the point where they have not been staying in their home for the week before this hearing. The female landlord also referred to an inspection by an "officer" who attended her home and could verify some of her claims about the harassing behaviours of the tenant. Both parties referred to separate police files that have been created to follow up on their complaints about one another. They provided no copies of any police incident reports nor did they call any witnesses to support their version of what has transpired during this tenancy.

The tenant denied the landlords' allegations that he has been taking measures to disturb the landlords. He said that he is the victim of their harassment, including the female landlord's contacts with his workplace to cause difficulties for him. He said that he intends to be accompanied by a lawyer at the June 14, 2012 hearing.

### Analysis

Section 56(1) of the *Act* reads in part as follows:

**56 (1)** *A landlord may make an application for dispute resolution to request an order*

*(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [landlord's notice: cause], and*

*(b) granting the landlord an order of possession in respect of the rental unit...*

Section 56 (2) of the *Act* permits me to make an order specifying an earlier date for the end of a tenancy than would be required under a 1 Month Notice issued by the landlords, only if I am satisfied that, among other matters, the tenant has engaged in illegal activity that 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 **and** it would be unreasonable, or unfair to the landlord to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

When a 1 Month Notice has been issued and a hearing scheduled (as it has been in this case six days after the current hearing), section 56 of the *Act* is available for use in exceptional cases where a landlord can demonstrate that there is real concern as to what would happen in the interim period between the two hearings if an Order of Possession were not issued.

In this case, the landlords have testified that they have not stayed at the rental property for the week prior to this hearing. The tenant has given sworn testimony that he is attempting to avoid problems with the landlords until his application has been heard. The landlords' evidence that they feel unsafe and disrespected and are concerned about what they perceive to be the tenant's combative and aggressive attitude falls well short of the standard required to obtain an early end to this tenancy. Similarly, I find the examples the landlords provided of the alleged significant escalation of the tenant's "harassment" of the landlords does not entitle them to an early end to this tenancy, especially given the short time frame until the hearing of the tenant's application to cancel their 1 Month Notice. While the examples cited by both parties describe increasing tension between the parties, I do not find this situation to be so extreme that it requires an early end to this tenancy shortly before the more standard process for considering disputes of this nature can be heard on June 14, 2012.

Based on the testimony of the parties and the landlords' written evidence, I find that the landlords have failed to prove that any of the circumstances described above exist to the extent that it would be unreasonable or unfair to the landlords to wait until the tenant's application to cancel their 1 Month Notice can be heard six days after the landlords' application has been heard. For this reason, I dismiss the landlords' application for an early end to this tenancy. This decision has no bearing on the tenant's application to cancel the landlords' 1 Month Notice or on the validity of the grounds identified by the landlords for issuing their 1 Month Notice. As noted at this hearing, the test for considering the landlords' 1 Month Notice is considerably different than that before me with respect to the landlords' application for an early end to tenancy under section 56 of the *Act*. Having been unsuccessful in their application for an early end of tenancy, I find that the landlords are not entitled to recover the filing fee paid for their application.

### Conclusion

I dismiss the landlords' application in its entirety. 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

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Residential Tenancy Branch