



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes:

ET

### 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 parties appeared and each gave testimony in turn.

### Issue(s) to be Decided

The landlord is seeking an Order of Possession based on section 56(1) of the *Residential Tenancy Act*, (the *Act*), which permits the landlord to end a tenancy without notice to a tenant in certain restricted and compelling circumstances.

The issue to be decided, based on the testimony and the evidence presented during the proceedings, is whether or not the landlord is entitled to an Order of Possession to end the tenancy without Notice.

### Background and Evidence

The tenancy began in October 2011 with rent set at \$700.00 and no security deposit was paid. No written tenancy agreement was submitted into evidence.

The landlord testified that the tenancy should end because the tenant has placed the property at risk by changing the locks. The landlord testified that the tenant was engaging in illegal activity under investigation by police and denied the landlord access, despite verbal requests for entry. The landlord testified that the tenant gave the landlord NSF cheques for rent, prompting a fraud investigation by police. In addition, according to the landlord, the tenant was not cooperating with the realtor in showing the unit and made reference to a letter from the agent that confirmed this. The landlord testified that the tenant had caused the electrical system to heat up, requiring repairs and was not maintaining the exterior of the property, which the landlord pointed out was in shambles. The landlord testified that the tenant has also bothered other residents by yelling threats and derogatory commentary about the landlord out her window overheard by people in the park. The landlord stated that she was also told that the tenant has removed the refrigerator.

The landlord testified that she previously issued eviction notices to the tenant, but admitted that they were not issued on the approved forms from the Residential Tenancy Branch, because the landlord had mistakenly believed that the Residential Tenancy Act did not apply being that the parties never signed a legal agreement for the tenancy.

The tenant disputed the landlord's application and denied most of the allegation. The tenant pointed out that the police did not lay any charges against her. The tenant's position is that there is no valid basis for the landlord to accuse her of engaging in illegal activity. The tenant testified that she had not impeded the landlord's realtor from showing the unit and freely allowed the agent entry into the unit on two occasions. However, according to the tenant, the landlord had never given her proper written notice in accordance with the Act for the landlord to access the unit. In fact, the tenant felt that the landlord's interference in calling police and repeatedly contacting tenant has impeded her quiet enjoyment of the unit in violation of section 28 of the Act.

The tenant testified that she will be moving out of the rental unit on July 15, 2012.

### **Analysis**

Section 56 of the Act provides that a landlord is entitled to end a tenancy without notice to the tenant if the conduct meets two conditions:

First, one of the following must be established. The tenant has:

- 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;
- engaged in illegal activity that has, or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant, jeopardize a lawful right or interest of another occupant or the landlord or cause extraordinary damage to the residential property

Secondly, in addition to proving one of the above, the landlord must also prove 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. I find that the standard of proof required to justify an immediate end to a tenancy on this basis is quite high.

Based on the testimony and evidence put forward by the landlord and the tenant during these proceedings, I find that the landlord has failed to meet the burden of proof in satisfying the criteria set out in section 56 of the Act that would justify an immediate end to this tenancy without Notice.

The landlord was not able to prove that the tenant was clearly engaging in the criminal activity being alleged. Moreover, the tenant's denial of access to the landlord would not qualify as a basis for an emergency eviction under section 56(1) and in any case, the landlord herself did not comply with section 29 of the Act which requires a request for access to be in writing. I also find that the tenant's failure to pay rent or the tenant's actions in issuing NSF cheques for rent owed, is covered under section 46 of the Act which allows the landlord to serve a Ten Day Notice to End Tenancy for Unpaid Rent. Unpaid rent is not the type of violation of the Act that would meet the specific criteria listed under section 56(1).

Given the above, I do not find that the landlord presented sufficient evidence during these proceedings to prove that it would be unreasonable and unfair to the Landlord to wait for a notice under section 47 to take effect.

However, as the tenant has agreed to vacate the rental unit on July 15, 2012, I find that the landlord will be issued with an Order of Possession effective 1:00 p.m. on Sunday July 15, 2012.

### **Conclusion**

Accordingly, I dismiss the landlord's application, and order that this tenancy will end by consent effective July 15, 2012. I hereby issue an Order of Possession in favour of the landlord, effective 1:00 p.m. on July 15, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 28, 2012.

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Residential Tenancy Branch