



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with an application by the landlord for seeking an early end of tenancy and an order of possession. The landlord participated in the conference call hearing but the tenant(s) did not. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by having a witness present when posting the documents on the tenants' door on October 26, 2012. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence. The landlord and their witness gave affirmed evidence.

### Issues to be Decided

Is the landlord entitled to an early end of tenancy and an order of possession?

### Background and Evidence

The tenancy began on or about January 1, 2012. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$425.00.

The landlord gave the following testimony; the subject tenant resides in the basement of a two level home, has control of the heat thermostat, multiple attempts were made to have the tenant turn on the heat as the upstairs tenant was cold, after one week and the police attending the matter was resolved and the tenant turned on the heat, it has no longer been an issue, the landlord is concerned about the non payment of rent since

September, multiple people coming in and out of the unit at strange hours of the night, seeks to end the tenancy.

The landlords witness gave the following testimony; is uncomfortable and nervous around the subject tenant, was verbally abused by the tenant on one occasion where the tenant called the witness a derogatory name, doesn't feel it's fair that she has to live with this apprehension in a place where she pays to live, also seeks to have the tenancy end early.

### Analysis

In making an application for an early end to this tenancy the landlord has the burden of proving that there is cause for ending the tenancy, such as unreasonably disturbing other occupants, seriously jeopardizing the health and safety or lawful right or interest of the landlord and placing the landlords property at risk, **and** by proving that it would be unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice To End Tenancy for Cause under Section 47 of the Act to take effect.

It is apparent from the testimony of the landlord that there are issues between the tenant and the landlord. Section 56 of the Act uses language which is strongly written and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk or that it's **unfair** to the landlord or other occupants to wait for a Notice to End Tenancy.

Based on the testimony of the upstairs tenant and the landlord, I am not satisfied that the landlord has proved its case and is not entitled to an order of possession.

The tenancy remains in effect.

In regards to the unpaid rent the landlord advised that she has a separate hearing scheduled on another day and will be dealt with at that time.

Conclusion

The landlords' application is dismissed.

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: November 13, 2012.

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Residential Tenancy Branch