



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with a landlord's application for an early end of tenancy and an Order of Possession. The landlord and the landlord's authorized agent did not appear at the hearing. The landlord and landlord's agent were represented by legal counsel. The tenant did not appear at the hearing.

Pursuant to a sworn affidavit of a process server, I was presented with evidence that a process server attended the residential property seven times between February 2, 2013 and February 7, 2013 for purposes of serving the hearing documents upon the tenant; however, the tenant or the occupants of the rental unit would not open the door of the rental unit. Satisfied the tenant was avoiding service, the process server sent the hearing documents to the tenant via registered mail on February 6, 2013. I was provided a registered mail tracking number. A search of the registered mail tracking number showed that Canada Post attempted delivery on February 7, 2012 and a notice card was left on that date. The tenant had not picked up the registered mail as of the date of this hearing.

Based upon the evidence presented to me, I am satisfied the landlord made reasonable attempts to serve the tenant with the hearing documents in a timely manner and that the tenant is avoiding service. I am further satisfied that the hearing documents have been available to the tenant via registered mail since February 7, 2013 which is more than five days before this hearing. Therefore, pursuant to the authority afforded me under section 71(2) of the Act I order that the hearing documents were sufficiently given or served for purposes of the Act.

I was presented a document signed by the owner authorizing the strata corporation that is listed as an applicant in this matter the authority to enter the rental unit with a bailiff. The lawyer appearing before me also confirmed that he was retained by the strata corporation but has also had discussions with the owner and that the owner has requested his assistance to regain possession of this unit. As a bailiff may only enter a rental unit with a Writ of Possession, which is obtained after an Order of Possession is

granted and served, I accept that the strata corporation is an authorized agent for the landlord for purposes of ending the tenancy and obtaining an Order of Possession.

In light of the above, I proceeded to hear from the lawyer representing the applicants in the absence of the tenant.

### Issue(s) to be Decided

Has the landlord established a basis for ending the tenancy earlier than the effective date of a 1 Month Notice to End Tenancy for Cause, had one been issued, and obtaining an Order of Possession pursuant to section 56 of the Act?

### Background and Evidence

The tenancy commenced October 1, 2012 and the tenant is required to pay rent of \$1,200.00 on the 1<sup>st</sup> day of every month. The rental unit is occupied by the tenant and two male occupants.

In support of this application, I was presented with submissions that the tenant, and/or occupants of the rental unit, have:

- Made threats of physical violence and/or retaliation, swore and shouted at the building's security guard, a caretaker for the building and the owner of the unit;
- Broken glass front door by prying it with a crowbar;
- Broken into cars in the parking area of the residential property;
- Created excessive levels of noise from music or screaming;
- Thrown possessions over the balcony of the rental unit;
- Thrown garbage and spit in the lobby and elevators.

The tenant and/or her occupants are suspected of other destructive behaviour or activity in the residential property but such activity was not observed by those who had provided evidence I have not considered those suspicions further.

I was provided sworn affidavits of the security guard, a caretaker, and owners at the residential property; pages of daily logs prepared by the security guard; photographs of the broken front door and the tenant's balcony, a receipt for the repair of the front door, and a DVD containing footage of cars getting broken into.

In addition, I was presented with a copy of a 1 Month Notice to End Tenancy for Cause issued to the tenant with an effective date of November 30, 2012. This Notice to End

Tenancy was to be the subject of a dispute resolution proceeding scheduled for December 12, 2012. The owner did not appear at that hearing and the landlord's Application for Dispute Resolution was dismissed. It was submitted that the owner did not appear at that hearing because after serving the tenant with documentation in support of ending the tenancy two men approached him with the intention of attacking him. The presence of a police officer interfered with the attack. The owner became fearful of his life and has since authorized the strata corporation to have the tenant removed from the property.

### Analysis

Section 56(2) of the Act permits an Arbitrator to make an order to end the tenancy on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied that:

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord's property at significant risk;
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) 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, or
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
  - (v) caused extraordinary damage to the residential property,
- and

(b) 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.

[my emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most severe circumstances.

Based upon everything presented to me, and in the absence of any rebuttal from the tenant, I am satisfied that the tenant, or the occupants of the rental unit, have acted in such a manner as to warrant an end to this tenancy for cause and that it would be unreasonable to wait for a 1 Month Notice to take effect given the severity of the behaviour.

In light of the above, I find the landlord has established a basis to end the tenancy early and obtain an Order of Possession under section 56 of the Act. Accordingly, I provide the landlord with an Order of Possession effective two (2) days after service and I order that this tenancy ends when the Order of Possession takes effect.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant and I order the tenancy ended when the Order of Possession takes effect.

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: February 15, 2013

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Residential Tenancy Branch

