



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking an early end to the tenancy and an order of possession under section 56 of the Act.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord alleges that the Tenants are damaging the rental unit property. He testified that the house is all damaged and that the windows were broken out.

The Landlord testified that the local municipal authority (the "City"), has been to the rental unit property too. In evidence the Landlord supplied a letter from the City dated December 14, 2012, indicating to the Landlord that there was an unauthorized secondary suite in the single family dwelling.

The Landlord provided a second letter from the City, dated January 15, 2013, indicating serious safety concerns with the building.

The Landlord alleges the Tenants are involved in drug activity and that the police have attended the rental unit dozens of times. The Landlord alleges he went with the police to the rental unit two months ago and it was badly damaged.

The Landlord alleges the Tenants are not allowing him to enter the rental unit property.

The Landlord also alleges he has not been paid rent, or the rent has been paid late, on many occasions. In evidence the Landlord supplied a copy of a 10 day Notice to End Tenancy for unpaid rent which was dated from January 2013.

In reply, the appearing Tenant explained he rented out the basement suite from the Landlord and not from the other Tenant named in the Landlord's Application. The appearing Tenant testified it was the Tenants who lived in the rental unit upstairs who have denied the Landlord entry to the rental unit.

The appearing Tenant testified the windows had been broken over two years ago. This Tenant testified that the police used to attend the rental unit regularly; however, this stopped about two years ago when the previous renters had moved out.

The Landlord denied renting the basement to the appearing Tenant. The Landlord then explained he really does not know all the people who are renting the upstairs, except the one Tenant named in his Application. The Landlord testified that the original renter had passed away several years ago, and the upstairs had been rented out to the sons of the deceased former tenant. The sons have apparently rented the upper unit out to the current Tenant, named in the Application.

When asked how the Landlord knew the rental unit was suffering damages inside, when he also testified the Tenants were denying him access, the Landlord explained he was in the rental unit in December of 2012 with the City when they inspected, before he had gone on holidays. The Landlord explained this is why he was just now applying for the emergency relief.

The Landlord then testified he really had no problems with the appearing Tenant. The Landlord testified he just wanted the tenancies in the rental unit to end as soon as possible so the Tenants would vacate.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities,

I find the Application of the Landlord must be dismissed. The tenancies in the rental unit will continue until ended in accordance with the Act.

Section 56 of the Act deals with the unusual remedy of ending a tenancy earlier than the tenancy would end if a Notice to End Tenancy for cause was issued under section 47 of the Act.

In order to end the tenancy earlier than if a Notice to End Tenancy had been given, the Landlord must prove that an emergency exists, such as immediate or very recent damage has occurred, or that illegal activity is occurring at the rental unit. The Landlord bears the onus of proof in these situations.

According to the testimony of the Landlord he last inspected the rental unit property in December of 2012 with the City, following a notice to him of an illegal secondary suite at the rental unit. He then went on holidays. He then waited until April 3, 2013, some four months later, to file this Application. Given this series of events, I am unable to find this is an emergency situation.

I am also unable to find the Tenants are involved in illegal activity, as the Landlord has provided insufficient evidence of this. In this instance the Landlord provided two police file numbers: one from 2012 and one from 2013. Referencing police file numbers does not provide the Branch with the contents of a police report. In other words, the branch does not have access to a police report unless the actual report is put into evidence by one of the parties.

The Landlord also had given the Tenants a 10 day Notice to End Tenancy for unpaid rent in January of 2013. The Landlord did not explain why he did not enforce this 10 day Notice to End Tenancy for unpaid rent three months ago.

Lastly, I am not satisfied that the two Tenants named in this Application are even on the same tenancy agreement. It appeared to me that these two Tenants had entered separate agreements for tenancies, and therefore, they should not have been named in the same Application. I explained to the Landlord at the end of the hearing that if the tenancies were separate they had to be treated separately, and could not be put on the same Application, or Notice to End Tenancy.

For these reasons I find the Landlord has not proven that the tenancies here should end earlier than if a one month Notice to End Tenancy for cause was given, and the Application is dismissed.

Conclusion

The Landlord applied for the unusual remedy of ending the tenancy earlier than it would if a one month Notice to End Tenancy for cause had been issued. The Landlord had insufficient evidence to prove the tenancy should end earlier than if such a Notice was given.

The Landlord also named two Tenants in the same Application, in a situation where it appears these are separate, different tenancies.

The Landlord's Application is dismissed.

The tenancies will continue until ended in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 15, 2013

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Residential Tenancy Branch

