



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

1. An early end of tenancy and an Order of Possession – Section 56; and
2. An order to recover the filing fee.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witnesses also provided evidence under oath.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy started in September 2010. The Landlord states that on June 19, 2013 a friend of the Tenant who lives a few blocks away came to the back yard and threatened the Landlord’s life, including threats of a bike gang’s involvement. The police were called however no charges have been laid and no restraining order was obtained. The Landlord states that the police told the Landlord to wait for the outcome of the Landlord’s hearing before making an application for a restraining order against the Tenant’s friend. The Landlord’s Witness, the Landlord’s wife, states that she heard the Tenant’s friend use abusive words and that the friend told the Landlord that he would “finish him off”. The Landlord provided witness letters from neighbours in relation to the

incident on June 19, 2013. The Landlord states that he has an application for an order of possession on the unit to be heard on July 16, 2013 but that he cannot wait for this hearing date as the Tenant's friend is a regular visitor to the unit.

The Tenant states that she had previously been locked out of the unit by the Landlord and upon coming to the unit on June 19, 2013 the Landlord told her if she did not take the bikes from outside the unit the Landlord would throw them away. The Tenant states that her son came to take his bike and the Landlord threatened to hit the boy if he ever came back into the yard. The Tenant states that the Landlord was yelling at her and threatening her and that her friend heard the noise and came to the back yard. The Tenant states that the police were called and that the Landlord was told that the Landlord could not stop the Tenant from being in the unit and that the friend could continue visiting at the unit.

The Tenant's friend, the Witness, does not dispute that he threatened the Landlord and states that this was in response to the Landlord's threat to the Tenant's seven year old child and that the Landlord was heard twice threatening to hit the child. The Witness states that he told the Landlord next time he threatens the child and its mother, the Witness would kick the Landlord's door down and beat him up. The Witness denies saying anything to the Landlord about a bike gang's involvement and the Tenant states that she doubts such a bike gang would ever bother themselves with these matters. The Tenant states that since gaining entry to the unit, several items have been discovered missing. The Tenant states that although she wishes to move out of the unit, two agencies have advised her to wait until the outcome of a hearing scheduled for July 16, 2013. The Tenant states that she has changed the locks to her unit and that her brother is staying with her until the next hearing date. The Tenant states that she wishes to address her grievances and or claims at the upcoming hearing.

### Analysis

Section 56 of the Act provides that a landlord may make an application to end a tenancy earlier than it would end if the landlord issued a 1 Month Notice to End Tenancy for

Cause and obtain an Order of Possession in certain circumstances. It is not necessary for a landlord to issue a 1 Month Notice; however, a landlord must show 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.

Based on the undisputed evidence of the Parties, I find that the Tenant's friend and Witness threatened the Landlord. I accept the Tenant and Witness evidence however that that this threat followed the Landlord's threat of harm to the child and the Tenant. This evidence is supported by the undisputed evidence of significantly unreasonable behavior of the Landlord in locking the Tenant out of the unit. There is no evidence that the Tenant and her child have done anything to support an eviction based on this Notice. I also give significant weight to the Landlord's evidence that no restraining order has been obtained on the advice of the police which supports the Tenant's evidence that the Witness has not been stopped from visiting the Tenant. I find therefore that while there may have been an unreasonable disturbance by the Witness, the Landlord

has not substantiated that it would be unreasonable to wait for a notice to end tenancy under section 47 to take effect.

I therefore dismiss the Landlord's application.

Conclusion

The Landlord's 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: July 09, 2013

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Residential Tenancy Branch