



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

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### **Introduction**

This Hearing dealt with the Landlords' application for an early end of tenancy and an Order of Possession under Section 56 of the Act.

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.

The Landlords testified that they served the Tenant with the Notice of Hearing documents by posting the documents to the Tenant's front door at the rental unit on July 31, 2013. They stated that they also served him with copies of their documentary evidence by posting it to the Tenant's front door.

The Tenant testified that he did not receive the Notice of Hearing documents until August 8, 2013, when he attended at the Residential Tenancy Branch on a different file. He testified that he did not receive any documentary evidence from the Landlords. The Tenant stated that the Landlords have blocked his access to the front door and that he now enters the rental unit through the garage.

The Tenant provided documentary evidence to the Residential Tenancy Branch, but did not provide it to the Landlords.

Both parties wished to proceed with the Hearing and therefore, I took their verbal testimony with respect to the Landlords' application.

The Tenant's roommate was present at the commencement of the hearing. The Tenant's roommate was to give testimony as the Tenant's witness and was therefore

excluded from the proceedings until he was called to testify. The Tenant's roommate exited the call during the Hearing and was not called to give testimony.

### **Issue(s) to be Decided**

Have the Landlords established that the tenancy should end early and the Landlords be provided with an Order of Possession under Section 56 of the Act?

### **Background and Evidence**

At the outset of the Hearing, both parties stated that there have been 3 previous Hearings with respect to this tenancy. I advised the parties that I would be looking up the Decisions in order to be sure that some issues had not already been decided.

The first hearing was held on June 19, 2013, and was scheduled to hear the Landlords' application for an early end to the tenancy. The Landlords' application was dismissed and a decision was rendered on June 26, 2013. The issues identified by the Landlord at the June 19<sup>th</sup> hearing were different from the issues identified at this Hearing.

On June 27, 2013, the second Hearing took place and was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Landlords' Use issued May 28, 2013 and a Notice to End Tenancy for Cause issued June 3, 2013. The Tenant also applied for an Order that the Landlords comply with the Act, regulation or tenancy agreement and compensation for damage or loss under the Act, regulation or tenancy agreement. The arbitrator dealt with the Tenant's applications to cancel the Notices and the remainder of his application was adjourned to July 17, 2013. The arbitrator granted the Tenant's application to cancel the Notices. The Notice to End Tenancy for Landlord's Use was canceled because the tenancy agreement is a lease and it does not expire until December 1, 2013.

The Tenant did not sign into the reconvened Hearing on July 17, 2013, and therefore the Tenant's applications for compensation and an Order that the Landlord comply with the Act, regulation or tenancy agreement were dismissed without leave to reapply.

On August 8, 2013, the parties were present at a third Hearing. The decision has not yet been rendered. The August 8<sup>th</sup> Hearing was convened to consider cross applications. The Landlords applied for an Order of Possession for Cause and monetary orders. The Tenant applied to cancel the Notice; an Order for regular and emergency repairs; an Order suspending or setting conditions on the Landlords' right to enter the rental unit; an Order authorizing the Tenant to change the locks;

compensation for damage or loss; an Order that the Landlords comply with the Act, regulation or tenancy agreement; and an Order allowing a rent reduction.

The residential property is a property containing a house, a barn, a horse paddock and riding ring. There is dispute between the parties with respect to whether the tenancy agreement includes the entire property with the exception of the barn, or the house and the adjacent front and back yard only.

The tenancy agreement is a fixed term lease commencing on January 1, 2013, and set to expire on December 31, 2013. At the beginning of the tenancy, the Landlords advised the Tenant that they intended to live in another country for two years. In early May, 2013, the Landlords told the Tenant that they were moving back to Canada and that they had sold the residential property. However, the sale fell through. On June 5, 2013, the Landlords moved a trailer and their horses onto the residential property. The Landlords are currently living on the residential property.

The residential property gets its water from a deep well. There are two pumps which provide the well water to the property. One is outside the rental unit, the other is located inside the rental unit.

The Landlords gave the following submissions:

The Landlords seek an early end to tenancy because they allege that the Tenant and/or his roommate caused exceptional damage to the rental unit by purposefully causing two floods.

The Landlords stated that the floods occurred over the course of the last month, which they attribute to the Tenant's actions. They stated that the first flood was discovered by the Landlords on July 1, 2013, during the course of fixing the water system. The second flood occurred on July 29, 2013.

They also allege that the Tenant did not immediately advise the Landlords of the damage caused by the floods, which have put their property at risk of mould and other damage. The Landlords submitted that the Tenant is denying access to the rental unit in order for the flood damage to be remediated.

The male Landlord also alleged that the Tenant is tampering with the pump systems, which causes the water to shut off. He stated that he is suspicious because there is a pattern that has developed; a dispute resolution hearing, then a flood, then no water, then denying access to the Landlords. The male Landlord stated that if there is water

over run, a safety mechanism shuts off the outside pump. If the well water level gets too low, the pump shuts off in the house.

The Tenant gave the following submissions:

The Tenant alleged that the Landlords are harassing him and his roommate by blocking their driveway, calling child care workers to complain about his roommate's children, and encouraging their friends to call the SPCA about the Tenant's dogs.

The Tenant stated that the water leak was in the basement of the rental unit, which he does not normally occupy. He stated that he first saw the water marks at the same time as the Landlord did. The Tenant alleges that the Landlords are exaggerating the extent of the damage. He stated that he has cleaned up the water by mopping it up and renting a de-humidifier.

The Tenant denied stopping the contractor from entering the rental unit. The Tenant alleges that the Landlords are creating the problem with the water pumps. He stated that he had no water again on August 4, 2013, so he called the company that initially came after the first flood and discovered that the filtration system had been by-passed. Shortly afterwards, the water came back on.

The Tenant stated that he hired a professional company to investigate the plumbing at the rental unit. The company snaked the lines on August 2, 2013, and found and cleared a blockage approximately 15 feet away from the foundation. He stated that he believed the blockage caused the water to back up and to leak into the rental unit.

The Landlords gave the following reply:

The Landlords stated that the Tenant's roommate denied the contractor access to the rental unit, so they had to call the police.

They stated that it was true that the first flood was discovered by the Tenant at the same time as the Landlord discovered it; however, they stated that they were never told about the second flood.

**Analysis**

Section 56(2) of the Act permits an arbitrator to make an order ending a tenancy early, only if 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.

The onus is on the Landlord to provide sufficient evidence, on the balance of probabilities, that the Tenant, or someone permitted on the rental property by the Tenant, has acted in such a way as to warrant an order to end the tenancy for cause and that it would be unreasonable to wait for a 1 Month Notice to take effect. The burden is high as this provision is intended to apply only in the most severe of circumstances.

In this case, I find that the Landlords have not met the burden of proof. I find that the Tenant provided a plausible explanation for the cause of the water damage and that the Landlords did not provide sufficient evidence that the Tenant or his roommate deliberately caused flooding, or shut off the pumps, or denied access to the rental unit.

### **Conclusion**

The Landlords' application for an early end of tenancy and Order of Possession under Section 56 of the Act is dismissed. The tenancy will continue until it is ended in accordance with the provisions of the Act.

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: August 09, 2013

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Residential Tenancy Branch