



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

ET

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession and for an early end to the tenancy.

The Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to the female Tenant on July 10, 2013. In the absence of evidence to the contrary I find these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Tenant did not appear at the hearing.

The male Tenant was in attendance at the hearing. He stated that he received a copy of the Application for Dispute Resolution from the female Tenant.

### Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 28, 2013 and that there has been some conflict since the tenancy began, which is not directly related to the incident that is the subject of this application to end the tenancy early.

The Landlord and the Tenant agree that they share a common laundry room, which can be accessed from the inside the rental unit, and that two doors lead from the laundry room into the Landlord's living quarters.

The Landlord stated that on July 07, 2013 he noticed that one of the doors between his residence and the laundry room was unlocked. He describes the lock on this door as a passage lock, similar to one which is commonly used on bathrooms and can be easily

unlocked with a sharp object. He stated that he also noticed that the safety chain which is located on his side of this door had been torn from the wall.

The Landlord stated that the other door between his residence and the laundry room was secured with an L bracket on his side of the door. He stated that on July 07, 2013 he noticed that the L bracket had been torn from the wall.

The Landlord stated that on July 07, 2013 he asked the male Tenant about the doors and the male Tenant informed him he did not know anything about them, but that later that day the male Tenant informed him that he had opened the doors while sleep walking. The Landlord stated that he did not notice anything disturbed in his residence and that he reported the incident to the police. He does not know whether the police have laid charges in the matter but he has been advised that the male Tenant was interviewed about the incident.

The Landlord submitted photographs of the L bracket and the safety chain that were torn from the wall. On the basis of these photographs I find it reasonable to assume that no damage could be seen from the laundry room if the doors were closed.

The Landlord stated that he has now installed dead bolts on both doors but he still fears for the safety of his family.

The Tenant stated that on July 06, 2013 the Landlord asked him about the doors, that he then spoke with the other Tenant about the doors who informed him that he had been sleeping walking the previous evening, and that he then relayed that information to the Landlord. He stated that he had no recollection of sleep walking. He stated that the police have not yet spoken with him about this incident.

The Tenant read out a statement from the other Tenant in which she declared that at approximately 5 a.m. on July 06, 2013 she heard the male Tenant calling out to her in the night; that she went to the laundry room and could not see him there; she then found him on the other side of one of the doors leading to the Landlord's residence; she did not notice any damage to the door(s); she determined that he was sleep walking; and that she did not mention the incident to the male Tenant until he told her about the doors.

The Landlord questions the credibility of the Tenant's version of events because he cannot understand why he would not have heard the male Tenant calling the female Tenant.

### Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) of the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

While it is possible that the male Tenant entered the Landlord's residence for an illegal purpose, it is equally possible that he unknowingly entered the residence while he was sleeping.

I find the fact that the Landlord did not find anything disturbed in his residence lends credibility to the Tenant's version of events, as it is not common for someone to forcibly enter a residence and not take or damage something.

I find the fact that two doors were forced open lends credibility to the Tenant's version of events, as it is not necessary to force two doors open if the intent is simply to enter the residence.

I find that the delay in reporting the incident to the Landlord does not impact the credibility of the Tenant's version of events, as I find it reasonable that the male Tenant had not yet been informed of the incident.

I find that the discrepancy in dates does not impact the credibility of the Tenant's version of events, as the date does not impact the essence of the Tenant's version of events and can be easily attributed to the passage of time.

I find the fact that the Landlord did not hear the Tenant calling the other Tenant does not impact the credibility of the Tenant's version of events, as I note that he also did not hear the doors being forced open which could, arguably, have been equally loud.

As the Tenant has provided a reasonable explanation for this incident, I find that the Landlord does not have grounds to end the tenancy on the basis of this isolated incident. I therefore dismiss the Landlord's application to end this tenancy early.

While I accept that the Landlord has fears for the safety of his family, I cannot conclude that those fears are reasonable given the explanation that has been provided. I further note that the Landlord has now installed deadlocks on the adjoining doors and it is unlikely the Tenant can now open those doors while he is sleeping.

I specifically note that this decision does not prevent the Landlord from serving the Tenant with a One Month Notice to End Tenancy for Cause if the Landlord can establish that there have been a series of disturbances during this tenancy, including this one, or if the Tenant's sleep walking continues to result in damage to the property.

### Conclusion

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 26, 2013

---

Residential Tenancy Branch