



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and for recovery of the filing fee.

The two parties and the landlord's witnesses appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The landlord's witnesses were excused from the hearing until they were ready to testify.

The tenants did not raise any issue regarding service of the evidence. The tenants did not supply documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Have the tenants breached the tenancy agreement, *Act* or regulations to an extent as to entitle the landlord to end this tenancy early without waiting for a notice under section 47 of the *Act* to take effect?

### Background and Evidence

The landlord provided undisputed testimony that this tenancy began in mid July 2013, monthly rent is \$800 and the tenants paid a security deposit of \$400 at the beginning of the tenancy.

The rental unit is one of 8 separate rental units in an older character home, as termed by the landlord.

The landlord's relevant documentary evidence included three witness letters about the alleged behaviour of the tenants and another letter from the landlord.

In support of their application, the landlord testified that the tenants, particularly the male tenant, has violated the space of the other residents of the home, refuses to smoke his marijuana outside the home, and has assaulted other tenants.

Witness TB testified that he hears noises, his cat is upset and that he smells smoke sometimes. TB said that the tenants have left the front door to the residential property unlocked.

Witness SA testified that tenant ET refuses to smoke his marijuana outside, which is causing health concerns for herself and her cat. SA also testified that the tenant turned on their stereo to music she finds unpleasant and she has had to tell him to turn down the volume.

Witness RL testified that ET was rude in front of him, was highly verbal, has heard him slam doors, and pull down the fire alarm.

In response to my question the landlord said that two other residents are marijuana smokers and that others smoked, but outside. The landlord testified that the RCMP have been called out to the residential property.

I note that the landlord also submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), and the tenant admitted not paying the rent; however the landlord had withdrawn the part of his application for dispute resolution requesting an order of possession for the rental unit due to unpaid rent.

In response, the tenant submitted RL was a marijuana smoker, that TB smoked in the tenant's rental unit, and that he blows his smoke outside.

The tenant denied the abusive behaviour.

### Analysis

After reviewing all the relevant oral and written evidence, I find that the landlord has not met the test required under section 56 of the *Act* to end this tenancy early.

Section 56 of the *Act* is an extraordinary remedy which grants the Director authority to end a tenancy without a notice of end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be addressed by issuing notices under sections 46 or 47 of the *Act* and then filing an application for Dispute Resolution based on those notices, although I make no findings as to whether the stated reasons have been established.

In reaching this conclusion, I was persuaded by the landlord's lack of compelling evidence of an emergency or extraordinary nature. I also did not find the witness statements sufficiently persuasive as one letter stated the incorrect rental unit the tenant resided in or that she resided in and the statements were written by the landlord, or with his assistance, after the landlord's application had been filed.

Due to the above, I find the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice or hearing for dispute resolution under section 46 or 47 to take effect.

### Conclusion

I have denied the landlord's application and dismiss it without leave to re-apply. I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 46 or 47 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* and is being mailed to both the applicant and the respondents.

Dated: December 04, 2013

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Residential Tenancy Branch

