



# 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 by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") to end the tenancy early and obtain an Order of Possession. The Landlords also applied to recover the filing fee from the Tenant for the cost of the application.

One of the Landlords and a witness appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. The Landlord testified that he served a copy of the application and Notice of Hearing documents to the Tenant personally on the same day he had received the paperwork from the Residential Tenancy Branch; the Landlord testified that the Tenant spoke to him during the service of this paperwork and told the Landlord that he would see him at a hearing that has been scheduled to take place on April 2, 2014 to deal with a notice to end tenancy for unpaid rent. However, the Landlord explained to the Tenant at this time, that there was an earlier hearing that is going to take place because of recent events for which he was required to appear and that the details of this hearing were in the paperwork served to him. Based on the undisputed testimony of the Landlord, I find that the Tenant was served the Notice of Hearing documents for this hearing in accordance with Section 89(2) (a) of the *Residential Tenancy Act* (the "Act").

The Landlord further testified that he had severed a copy of the documentary evidence used in this hearing by attaching it to the Tenant's door pursuant to Section 88(g) of the Act and the Rules of Procedure. As a result, I find that the Tenant is deemed to have received the evidence three days later, pursuant to Section 90(c) of the Act.

The Tenant failed to appear during the 50 minute duration of the hearing or provide any documentary evidence prior to the hearing despite being served in accordance with the Act. As a result, the undisputed evidence of the Landlords and witness was carefully considered 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 testified that this month to month tenancy started about 4 to 5 years ago. Currently the rent payable by the Tenant to the Landlord on the first of every month is \$755.00 for one of the rental suites in a of a fourplex building. The Landlord also has a security deposit from the Tenant.

The Landlord testified that on February 12, 2014 the Tenant was served with a notice to end tenancy for unpaid rent arrears. Since this time, the Tenant has engaged in a course of action intended to disrupt the peaceful and quiet enjoyment of the surrounding occupants of the building.

The Landlord testified that as a result, he has had to call the police several times to deal with the Tenant blasting music, turning off other resident's power and smoking inside the rental suite when it is a non smoking rental suite. The Landlord testified that the Tenant's neighbouring residents fear for their safety and that the disruption is so constant that neither the Landlord or the residents can wait for the time that it would take for a notice to end tenancy for cause to take effect; neither can they wait for the hearing scheduled on April 2, 2014 relating to an application for an Order of Possession for unpaid rent.

The Landlord called a witness to appear for the hearing. The witness, who is the upstairs renter, testified that the Tenant has been creating a disturbance in the building for over a year now due to a prior dispute involving the Tenant and the witness's son. The disturbances mainly centered on the playing of loud music which then occurred sporadically. However, the witness was able to put up with these sporadic events.

However, the witness testified that since the Tenant has been issued with the notice to end tenancy, the tenant has started to smoke inside the rental suite. The Landlord testified that the Tenant's rental suite is a non smoking unit and that the building is old and connected by many vents and separated by thin walls. The witness testified that the cigarette smoke is entering her suite and is affecting her son who has severe asthma.

The witness testified that her and her son are out most of the day and when they return to their suite, it is filled with cigarette smoke which comes from the Tenant smoking inside his rental suite throughout the day. As a result, the witness has to open the

windows and doors to circulate the air inside her suite. The witness testified that she is trying to get her son off his asthma medication and the Tenant's cigarette smoke is not helping. The witness testified that the Tenant always smoked outside his rental suite before but has now started to deliberately smoke inside the suite.

The witness went on to testify that the Tenant has increased his frequency of playing loud music during random times of the day when she is at home with her son; she calls the police who attend the premises and ask the Tenant to put the music down, which the Tenant does, but often, the music will start back up again. The witness referred to a log of the police calls made which was provided to the Landlord who in turn, submitted these as evidence. The witness stated that the music being played by the Tenant is so loud that it shakes her windows and coffee table.

The witness testified that since the Tenant became aware of the notice to end tenancy, he has started to play loud music more frequently and often bangs on his ceiling shouting obscenities and threats such as "fucking bitch, fucking cow, maybe someone should remove you, you better be careful because something bad is going to happen to you." The witness writes in her written submission that she fears the Tenant will do something to her or her rental suite and that she has asked other residents to look after her suite whilst she is out. However, the Tenant has started to harass the other residents looking out for the witness and the situation is now at a breaking point.

The witness testified that on February 16, 2014, after calling the police due to the Tenant's loud music, the Tenant knocked on her door and shouted obscenities in the presence of her son whilst questioned her as to why she had called the police causing her to further fear for her safety.

The Landlord testified that the Tenant's bedroom houses the electrical box for the property and the Tenant has been shutting off power to some of the other rental suites which was verified by the witness. The Landlord testified that as part of the tenancy agreement, the other renters in the property were provided with a key to the Tenant's unit to be only used in emergencies where access to the electrical box was required. However, the Landlord and witness testified that the Tenant had changed the locks to his rental suite but had provided them with a key. However, the key provided to the witness did not work and the witness is unable to get to the electrical box to turn the power back on. As a result, the witness contacted the Landlord who attended the rental suite with the police and the power was turned back on. The witness claims that the Tenant switches off power to her suite for durations of 20 minutes and up to 4 hours.

### Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable for a Landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause.

I am satisfied by the undisputed evidence and testimony of the Landlord and witness presented during the hearing that the Tenant has significantly interfered with and unreasonably disturbed the other occupants and the Landlord through the constant playing of loud music and shutting of the witness's power. I also accept the evidence of the witness that the Tenant has been smoking inside the rental suite and has threatened the witness which has seriously jeopardised the health and safety of the witness and her child.

Based on the above evidence, I determine that it would be unreasonable and unfair for the Landlord or the other occupants of the building to wait for a notice to end tenancy issued under the Act, to take effect and I find that the tenancy should end early.

I also find that the Landlord is entitled to the cost of filing the Application. As a result, the Landlord may retain \$50.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act. The Landlords and Tenant are still required to appear for the hearing scheduled on April 2, 2014 to deal with other issues which the Landlord has applied for.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite.

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: March 19, 2014

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Residential Tenancy Branch

