



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession.

The tenant did not attend this hearing, although I waited until 11:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In addition to her husband, the landlord asked that two witnesses be contacted by Telus to participate in this hearing. Witness VM participated in this hearing. The female witness identified by the landlord declined to participate when the Telus operator contacted her.

The landlord testified that she handed the tenant a copy of her dispute resolution hearing package on April 10, 2014. I am satisfied that the landlord served the tenant with this hearing package as declared by the landlord.

### Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession?

### Background and Evidence

This periodic tenancy for the lower rental suite in a two unit property commenced on or about April 1, 2010. The landlord lives in the upper suite. Monthly rent is currently set at \$750.00, payable on the first of each month. The landlord testified that there is no written tenancy agreement with the tenant. The landlord testified that she continues to hold the \$187.50 security deposit from this tenancy paid in April 2010.

The landlord's only written evidence was a two page April 8, 2014 letter from the landlord's son, which outlined the concerns of the landlord and her family about the tenant. In this letter, the landlord's son stated that when he told the tenant to turn his music down, the tenant approached him with a baseball bat threatening "to kill us or set

the house on fire.” Although this letter referenced repeated visits to the rental unit by the police, the landlord produced no dates when these occurred or written evidence from the police regarding these visits. This letter stated that the tenant invites “his drug dealer friends” to the rental property and prevents the landlord from using her backyard. This letter concludes with the statement that “we want him out of here as soon as possible as we already given (him) three notices previously.”

At the hearing, the landlord confirmed that she has a dispute resolution hearing scheduled for May 16, 2014, to consider her application for an end to this tenancy on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

The landlord testified that she witnessed the tenant threaten her son with a baseball bat on April 8, 2014. She said that the police were called regarding this incident, but the tenant was released by the police after three hours. She testified that there have been no incidents since April 8, 2014, although the tenant continues to play loud music.

The landlord’s husband said that he did not witness the April 8, 2014 incident. The only disturbance he has noticed since then has been the tenant’s slamming of doors within his rental unit.

The landlord asked that Witness YM be connected with this hearing as he witnessed the tenant’s threats on April 8, 2014. Witness YM confirmed that he was present when the landlord’s son spoke with the tenant on April 8, 2014. He described the tenant’s behaviours that day as very aggressive and intimidating. He testified that the tenant answered the door holding a baseball bat and said that if anyone came to try to enter his rental unit, he would kill them. He described the tenant as volatile with a violent nature.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord’s notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*

- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

In this case, the landlord has issued a 10 Day Notice and a 1 Month Notice and has a hearing scheduled on May 16, 2014 to consider her application to end this tenancy for unpaid rent and for cause.

While the tenant's behaviours and statements are of concern, the landlord has produced little independent evidence to demonstrate that the safety of the landlord or her family would be in jeopardy by continuing this tenancy until the landlord's applications to end this tenancy are considered on May 16, 2014. Many of the incidents identified in her son's letter address ongoing issues that appear to have been occurring for some time. The landlord did not call her son to act as a witness at this hearing, which reduces the weight I give to his April 8, 2014 letter. Her husband gave very little sworn testimony. Despite the landlord's assurance that there were many neighbours and family members who could attest to the tenant's actions, the only person other than herself who could speak directly to the incident of April 8, 2014, which led to her issuance of this application to end the tenancy early was Witness YM.

While the landlord and the letter from her son maintained that the tenant made a specific threat to kill the landlord's son, Witness YM who was present during the April 8, 2014 incident did not provide the same description. Witness YM testified that the tenant made a more general type of threat that could be interpreted to mean that he would respond with violence if someone tried to enter his rental unit illegally. Witness YM said that the tenant threatened to attack anyone who attempted to gain access to his rental unit.

The landlord produced no written evidence from anyone other than her son. The landlord testified that the police did not hold the tenant for more than three hours on April 8, 2014. The landlord and her husband testified that there have been no further incidents since April 8, 2014.

Based on the testimony of the landlord and her witnesses and my review of the letter from the landlord's son, I find that the landlord has failed to prove that any of the circumstances described above exist such that it would be unreasonable or unfair to the landlord or her family to wait until the outcome of the May 16, 2014 hearing to obtain a determination regarding the notices to end tenancy issued to the tenant. At that time, the landlord can provide evidence regarding both the 10 Day Notice and the 1 Month Notice.

I recognize that the landlord is interested and concerned about the potential that her tenant has for violence and is worried about her safety and the safety of her family. However, an application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

#### Conclusion

I dismiss the landlord's current application for an early end to this tenancy with the effect that this tenancy continues.

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: April 16, 2014

---

Residential Tenancy Branch

