



# 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 an Application for Dispute Resolution filed on October 10, 2014, by the Landlord to end the tenancy early, obtain an Order of Possession and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony that the Tenant was served notice of this proceeding by registered mail on October 15, 2014 and by posting the hearing documents on the door at the rental unit address. Canada Post receipts were provided in the Landlord's evidence.

When clarifying service of the hearing documents, the Landlord submitted that the Tenant had claimed not to have received a previous eviction notice that had been posted to the door, so he ensured that he had a photo of the notice on the door. The Landlord stated that the mail is delivered to a mail box attached to the house and at the time these documents were sent no one was living in the upstairs unit so the Tenant was the only party receiving mail at this time.

Canada Post tracking information confirms that Canada Post attempted delivery of the package on October 17, 2014 and that a notice card was left that date to advise the tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on October 22, 2014 that the registered mail was available for pick up. As of November 2, 2014 Canada Post tracking information confirms that the Tenant still did not pick up the registered mail and it was returned to the Landlord.

After consideration of the above information, I find that the Tenant was provided with 3 opportunities to retrieve the registered mail and did not. I find this to be a deliberate effort on the part of the Tenant to avoid service and pursuant to Section 71 of the Act I find the Tenant was sufficiently served with Notice of this hearing and I proceeded in her absence.

Issue(s) to be Decided

Should the Landlord be granted an end of tenancy and an Order of Possession?

Background and Evidence

The Landlord testified that he had submitted documentary evidence and a DVD video which had not been matched to the file at the time of the hearing. The computer system had been down at the time he had filed his application and at the time of this hearing. I advised the Landlord that I would consider his oral testimony and the documentary evidence once matched to the file.

The Landlord submitted that the Tenant entered into a written tenancy agreement for a month to month tenancy that began on August 29, 2014. Rent was payable on the 29th of each month in the amount of \$1,250.00 and the Tenant was required to pay \$625.00 as the security deposit. The Landlord stated that the Tenant gave him two cheques, one for the first month rent and one for the security deposit, and neither cheque could be cashed as they were both NSF. No rent or security deposit had been paid as of today's date.

The Landlord testified that the upstairs tenant vacated the property September 3, 2014, as they feared for their safety. Since then the police have attended the property on numerous occasions charging and arresting others at the property on October 5, 9, and 10<sup>th</sup>, 2014 for various reasons including, abuse to women and break and entering. The police damaged the front door when they used their battering ram to open the door. The Landlord noted that someone also broke the cable box to hook up cable.

The Landlord submitted that on October 21, 2014, the Tenant sent him a text message stating they would be moved out by October 31, 2014 at 5:00 p.m. The Landlord texted the Tennant on October 30, 2014 to confirm they would be out and the Tenant responded by text message and requested a meeting at the rental unit on November 1, 2014 at 8:30 p.m. The Landlord said when he attended on November 1, 2014 at 8:30 no one was there and he found the unit abandoned. He texted the Tenant and asked if she was returning or if she was gone for good but there was no response.

The Landlord testified that when he attended the unit on November 1, 2014, he found it was left damaged, scattered with debris, unsecured with all the windows left wide open and the front door damaged and the lock banged out of the door preventing the front door from closing properly and from being locked. The Landlord requested immediate possession of the rental property.

After consideration of the foregoing, I gave the Landlord a verbal order that I was granting him an immediate order of possession so he could secure the property.

### Analysis

Section 56 of the *Act* allows a tenancy to be ended early without waiting for the effective date of a one month Notice to End Tenancy if there is evidence that the tenants have breached their obligations under the tenancy agreement or *Act* and it would be unreasonable or unfair to wait for the effective date of a one month Notice to End Tenancy.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find that the Tenant significantly breached sections 28 and 29 of the *Act* by negatively affecting the quiet enjoyment of the upstairs tenant, to the point that the upstairs tenant vacated their home for safety reasons.

Next, I have considered whether it would be unreasonable or unfair to the Landlord to wait for a one month Notice to End Tenancy to take effect.

I accept the Landlord's undisputed submissions that the Tenant's and the Tenant's guest's behaviour escalated to the point that caused the upstairs tenant to vacate, caused the police to attend and use the battering ram to enter the unit, and that the Tenant has now abandoned the property leaving it unsecured and damaged. Therefore, I grant the Landlord's application to end this tenancy early.

### Conclusion

The Landlord has been granted an Order of Possession effective **Immediately**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

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: November 03, 2014

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Residential Tenancy Branch

