



# 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 scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act. The tenants did not appear at the hearing. The landlord testified that on November 6, 2014 she went to the rental unit to serve the hearing packages upon the tenants. The male tenant answered the door and took the hearing package and then gave it back to the landlord, refusing to accept it. The landlord then posted the hearing packages on the door of the rental unit. Service of the hearing documents was witnessed by the landlord's partner. I called the witness to testify and he confirmed service as described by the landlord. The witness also testified that approximately an hour later they observed the hearing packages had been removed from the door of the rental unit.

Section 90 of the Act deems a person to have received documents three days after they are posted on the door of their residence, even if the person refuses to accept the documents.

Based upon the evidence before me, I was satisfied the tenants were sufficiently served with the hearing packages in a manner that complies with the Act and I continued, I continued to hear from the landlord and her witnesses in the absence of the tenants.

### Issue(s) to be Decided

Has the landlord established that the tenancy should be ended and the landlord should be granted an Order of Possession under section 56 of the Act?

### Background and Evidence

The rental unit is a lower level suite that the co-tenants have been occupying since late June 2014. The upper suite has been occupied by other tenants (JL and JP) since mid-August 2014.

Despite this relatively short tenancy, several disturbances and incidents have taken place at the property. Below, I have recorded the more serious disturbances.

The landlord submitted that the male tenant was arrested at gunpoint by the RCMP in early September 2014 and kept in custody for a few nights.

On October 25, 2014 the female tenant assaulted JL by hitting her multiple times in the face in the common laundry room. JL called the police and the landlord. No charges were laid although the police suggested to the landlord that she commence eviction proceedings against the tenants.

On October 27, 2014 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenants. On October 28, 2014 the tenants signed a document indicating they would be vacating the rental unit by October 31, 2014. The landlord gave to the tenants the rent she had received from the Ministry for the month of November 2014.

On November 1, 2014 the landlord's partner attended the rental unit for purposes of conducting a move-out inspection; however, the tenants were still residing in the rental unit and they served the landlord's partner with a copy of their Application for Dispute Resolution to dispute the 1 Month Notice. A hearing has been scheduled for December 8, 2014 to hear the tenant's Application for Dispute Resolution to cancel the 1 Month Notice.

Later on November 1, 2014 the male tenant threatened to kill JP. The threats were heard by JP and JL. The police were called and the male tenant has been charged with uttering threats. The male tenant was released with conditions to keep the peace and not have contact with JL or JP. Although the male tenant does not have direct contact with JL or JP, the male tenant can be heard yelling derogatory remarks toward JP from the common area including calling him a "goof".

Both JL and JP testified independently that they are living in fear of their safety especially while coming from and going to their own unit. JL is also afraid to use the common laundry room. In addition, the tenants continue to be extremely loud during the night and have many visitors coming and going at all times. It is suspected that the male tenant is dealing drugs and may have weapons.

The landlord had two other witnesses and a written submission of a neighbour that she was prepared to put forth for my consideration; however, I found it unnecessary to hear more following the testimony of JL and JP.

The landlord submitted that in the circumstances described above it is unreasonable to wait for enforcement of the 1 Month Notice and the landlord seeks an Order of Possession effective as soon as possible.

### Analysis

While the tenancy may have legally ended on October 31, 2014 by way of the tenant's notice to end tenancy, the purpose of this hearing is not to determine the enforceability of that document. Nor, is the enforceability of the 1 Month Notice that was served upon the tenants an issue to be determined by way of this proceeding. Rather, the only issue before me is to determine whether the tenancy should be ended under section 56 of the Act.

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy and provide the landlord with an Order of Possession on a date that is earlier than the effective date of a 1 Month Notice to End Tenancy for Cause. This section of the Act is intended to apply to the most serious of circumstances and the landlord has a high burden of proof.

In order to grant an order to end the tenancy early I must be satisfied that:

(a) the tenant or a person permitted on the residential property by the tenant has done any of the following:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
  - (A) has caused or is likely to cause damage to the landlord's property,
  - (B) 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, or
  - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property,  
and

(b) 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 [landlord's notice: cause] to take effect.

[my emphasis added]

Upon hearing from the upper suite tenants JL and JP, whom I found to be very credible, I accept that their safety has been seriously jeopardized by the tenants and that the tenants have significantly interfered with their use of the residential property and unreasonably disturbed JL and JP's quiet enjoyment of their rental unit. I also find the seriousness of physical violence of October 25, 2014 followed by the uttering of death threats on November 1, 2014 warrants an immediate end to this tenancy. Therefore, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

I award the landlord recovery for the filing fee paid for this Application for Dispute Resolution. The landlord is authorized to deduct \$50.00 from the tenants' security deposit in satisfaction of this award.

### Conclusion

I have ordered the tenancy to be ended effective immediately. The landlord is provided an order of Possession effective two (2) days after service upon the tenants.

The landlord has been authorized to deduct \$50.00 from the tenants' security deposit in order to recover the filing fee paid for this Application for Dispute Resolution.

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 25, 2014

