



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIVE MILE HOLDINGS LTD./WHITE HOUSE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes ET, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's two female agents and male agent (collectively "landlord"), and both the male and female tenants, attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the male tenant was served personally with two copies of the Application for Dispute Resolution hearing notice ("Application") on October 28, 2014. The male tenant acknowledged receipt of the Application on behalf of both tenants on October 29, 2014. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were served with the Application.

The landlord testified that she did not provide a copy of the written evidence package, consisting of miscellaneous notes regarding this tenancy, a tenancy agreement, notice of rent increase and tenancy application, to the tenants. The male tenant confirmed that both tenants did not receive a copy of the landlord's written evidence package and did not otherwise have copies of the miscellaneous notes regarding this tenancy. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were not served as required by the *Act*, and I informed the landlord that I would not be considering the landlord's written evidence package at this hearing. The landlord confirmed that she would still be proceeding with the landlord's application.

The male tenant testified that the male landlord was served personally at the landlord's office with the tenants' written evidence package on October 30, 2014. The male landlord confirmed that he received the tenants' written evidence package. Section 88(b) permits a tenant to serve a landlord in person by leaving a copy with an agent of the landlord. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was served with the tenants' written evidence package on October 30, 2014.

Issue(s) to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on February 1, 2011. This was a fixed term tenancy for one year, after which it reverted to a month-to-month tenancy. Rent is payable monthly in the amount of \$1,815.00 on the first day of each month. A security deposit was paid by the tenants in the amount of \$823.00 on January 17, 2011.

The landlord testified that the landlord was seeking an early end to tenancy based on one incident which occurred on October 25, 2014. The landlord testified that the landlord's agents have only been with the landlord company for a month and the company recommended an early end to tenancy and to obtain an order of possession based on the above incident. The landlord states that there have been inquiries from other tenants in the building regarding the above incident and whether they are safe in the building, particularly if they make noise. The landlord testified that other tenants in the building were traumatized by the event, particularly given the lengthy police presence at the building on October 25, 2014. The landlord states that it is in the best interests of the rental unit building if the tenants vacate their rental unit without having to wait 30 days for a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") to take effect. There has been no 1 Month Notice issued by the landlord to end this tenancy.

The landlord's building managers testified that they were in their unit in the same apartment building as the tenants' rental unit when they heard yelling and slamming of doors on the night of October 25, 2014. They stated they went into the hallway of the apartment building and spoke with the male tenant about the commotion. They were advised by the male tenant that he was punched by the tenant in the unit directly above his rental unit, Witness GS ("Neighbour 1") when he confronted Neighbour 1 about noise complaints. They went to speak to Neighbour 1, who had already called the police. Neighbour 1 advised the landlord that the male tenant banged on his door, yelled at him, pushed him against the bathroom door and he fell to the floor. Neighbour 1 further advised the landlord that his mother-in-law and child were present, were crying and shaking, and that his mother-in-law saw the male tenant pull something out of his pocket that looked like a knife. Neighbour 1 confirmed to the landlord that no knife or other object was used on him by the male tenant. The landlord testified that the police arrived, asked what happened, spoke to both tenants and Neighbour 1, and arrested the male tenant that same night. The landlord stated that the police officer who attended that night would not be attending this hearing and the landlord was unaware of any criminal charges against the male tenant.

The landlord confirmed that there have been no further incidents between the male tenant and Neighbour 1 since October 25, 2014 and there have been no complaints from other tenants regarding the tenants' behavior since October 25, 2014. The landlord stated that there had been previous complaints from other tenants regarding loud arguments between the tenants inside their rental unit. The landlord testified that the landlord has not attempted to inspect the tenants' rental unit for weapons, since the incident on October 25, 2014.

The male tenant testified that on the night of October 25, 2014, he was dealing with a stressful family emergency with his wife. There had been noise from Neighbour 1 occurring all day. He stated this was an ongoing problem since Neighbour 1 moved in, and both tenants had numerous complaints to the landlord and Neighbour 1, to no avail. On October 25, 2014, the female tenant banged on her ceiling to alert Neighbour 1 to the loud noise issue and Neighbour 1 responded with banging back. The male tenant then approached Neighbour 1 at his unit and complained about the noise. The male tenant testified that Neighbour 1 tried to punch him in the face and he ducked, they both grabbed on to each other and the male tenant was brought into Neighbour 1's unit through this struggle. The male tenant pushed Neighbour 1 to the back wall and pulled his legs out from under him. The male tenant was then kicked in the ribs by Neighbour 1, for which he later received medical attention, and the male tenant then turned around and walked out of the unit. The male tenant testified that at no time during this altercation, did he pull a knife or anything else out of his pocket, nor did he try to punch Neighbour 1. The male tenant testified that Neighbour 1 is significantly taller and heavier than him.

The male tenant testified that he spoke to the building manager briefly after the incident. He was arrested by the police that night and taken to jail. He spent 18 hours in jail that night and was released on a peace bond. The male tenant testified that the peace bond included orders to avoid contact with Neighbour 1, his family, workplace and residence and to avoid the floor of the rental unit building where Neighbour 1 resides. The peace bond did not include any conditions with respect to the tenants having to vacate the rental unit or building. The male tenant was scheduled for an upcoming appearance in Court and has not been convicted of any crimes related to this incident, to date.

The male tenant testified that he has not had any contact with Neighbour 1 since October 25, 2014 and he does not use the elevator in the rental unit building in order to avoid Neighbour 1. The male tenant testified that he has a positive relationship with other tenants in the rental unit building, has made friends with many of them, and has not threatened or assaulted anyone else in the rental unit building. The male tenant testified that the tenants residing next door to Neighbour 1 have also complained about noise issues from Neighbour 1.

The female tenant testified that her husband, the male tenant, is not a violent person. She stated that he was simply upset about the family emergency on October 25, 2014, such that he went to speak to Neighbour 1 about reducing his noise levels. She did not witness the incident between Neighbour 1 and the male tenant on October 25, 2014. She stated that after the male

tenant returned from the incident upstairs, he was shaken and hurt from being kicked in the ribs by Neighbour 1. The female tenant further testified that the male tenant was not convicted of any crimes from the incident. She stated that both tenants had made complaints to the landlord about the noise problem with Neighbour 1 and had requested the landlord's help, to no avail.

Both tenants expressed their desire to remain in the rental unit, which they have occupied for four years, that they have friends in the rental unit building, that their young son has established himself in the surrounding neighbourhood and school, and that both tenants work in the area.

The witness, Neighbour 1, testified on behalf of the landlord at this hearing. He stated that on the night of October 25, 2014, he was playing with his son quietly when he heard the tenants making a noise below. He hit the floor back to quiet the tenants. Neighbour 1 testified that the male tenant approached him at his rental unit, hit the door hard and was yelling, but Neighbour 1 did not check who was outside his door when he opened it. He stated that the male tenant pushed him, causing him to fall down, after which the male tenant began punching him all over his body, including his chest. Neighbour 1 testified that he kicked the male tenant back. He stated that he saw something in the male tenant's hand which looked like a knife or a tool, so he went to the kitchen to find a broom. He stated that the male tenant left his unit while he was looking for a broom. Neighbour 1 testified that the male tenant never hurt him with any knife or tools during this incident. He called the police after the incident. He stated that his mother-in-law and son were present during this incident. Neighbour 1 missed work that day, due to this incident. Neighbour 1 testified that his family is now fearful, such that they check before opening their rental unit door, are more careful in the building and avoid taking the stairs.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters and e-mails, and the testimony of both parties and the witness, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 56 of the Act requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than 30 days as per a 1 Month Notice, due to the reasons identified in Section 56(2)(a) **and** that it would be unreasonable or unfair for the landlord to wait for a 1 Month Notice to take effect.

The landlord did not cite any specific provisions of the *Act*, for requesting an early end to tenancy. However, the landlord stated that the request was based on the incident between the male tenant and Neighbour 1 on October 25, 2014.

The landlord is presumably making claims under the following provisions of Section 56 of the Act, based on the landlord's oral evidence at the hearing:

*(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;*
- *...(iv) engaged in illegal activity that:*
  - *...(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.*

I find that the landlord has not made any submissions with respect to cause for evicting the female tenant of the rental unit. The landlord has simply stated that other tenants in the building have heard loud arguments coming from the tenants' rental unit but the landlord did not even identify the female tenant as a participant in these arguments. Accordingly, I find that the landlord has not met the onus to show, on a balance of probabilities, that the female tenant should be evicted early from her rental unit.

The landlord and Neighbour 1 did not provide any medical, documentary or other evidence that their own health or safety was "seriously jeopardized" by the male tenant as per Section 56(2)(a)(ii). The landlord was not even present during the incident on October 25, 2014 and only has knowledge of those events from being told by Neighbour 1 and the male tenant. The landlord did not provide any testimony that the landlord's own health or safety was "seriously jeopardized."

Neighbour 1 testified that he was punched and pushed by the male tenant but he did not provide any medical documentation to that effect. He did not testify about attending at the hospital or at a doctor's office for any injuries. In fact, the male tenant testified that he received medical attention for his bruised ribs, after Neighbour 1 kicked him in the ribs. Neighbour 1 admitted to kicking the male tenant during the altercation. Neighbour 1 stated that he and his family are in fear of the male tenant, avoid opening their door without checking who is there and avoid taking the stairs in the building. However, Neighbour 1 was not fearful enough to check his door on the night of October 25, 2014 when the male tenant first arrived at his door. Neighbour 1 testified that no knife or tool was used against him by the male tenant. The male tenant testified that no weapons were found on his person by the police after the incident and he had no knife, tool or other weapons on him during the incident. The landlord was not concerned enough about safety issues to even check the tenants' rental unit after being told by Neighbour 1 that the male tenant had a knife on him during the incident. Neighbour 1 did not produce his mother-in-law to testify as a witness at the hearing, regarding his family fear, any potential knife being visible on the male tenant's person, or the events of the incident generally. The landlord did not produce any documentary evidence or other witnesses from the residential building, to corroborate the landlord's testimony that other tenants were traumatized by the incident or were in fear of their own safety.

A peace bond is currently in place to prevent the male tenant from any contact with Neighbour 1 and his family, both at the residential building, as well as at Neighbour 1's place of work. The peace bond does not include any condition for the male and/or female tenant to vacate their rental unit and presumably, this was a consideration before the male tenant was released from jail. The landlord, tenants and Neighbour 1, all testified that there have been no further altercations between the male tenant and Neighbour 1 since the incident on October 25, 2014.

I find that the landlord and Neighbour 1 did not provide sufficient evidence to demonstrate that the male tenant significantly interfered with or unreasonably disturbed them, as per Section 56(2)(a)(i). The landlord did not testify that the landlord was personally affected by the incident, as the landlord was not present when it occurred. The landlord simply stated that the landlord was prompted to investigate the incident, after hearing yelling and slamming of doors that night. Neighbour 1 testified that he missed a day of work, due to the incident, but did not provide any written documentation to confirm same. No further incidents have occurred between the male tenant and Neighbour 1 since October 25, 2014. This was one occasion where an altercation ensued between the male tenant and Neighbour 1. Neighbour 1 even admitted to kicking the male tenant and attempting to find a broom to use during the altercation. There has been no history or pattern of disturbance or interference by the male or female tenant towards Neighbour 1. In fact, both tenants state that Neighbour 1 has interfered with their quiet enjoyment with his ongoing noise, of which the tenants and the landlord testified about during this hearing.

The landlord testified that the landlord does not have knowledge as to any potential criminal charges or convictions against the male tenant for this incident, although the matter is before the Court. The landlord did not produce any documentary evidence to prove that the tenant engaged in an "illegal activity," as per Section 56(2)(a)(iv), such as a police or incident report or any witness statements. The landlord did not produce any police officers to testify as witnesses at this hearing. Both tenants testified that no convictions have been made against the male tenant for any potential criminal charges and he had yet to make an appearance at Court.

I am not satisfied that the landlord has met the onus, on a balance of probabilities, to end this tenancy early against both tenants, based on the reasons in Section 56(2)(a) and that it would be "unreasonable" or "unfair," as per Section 56(2)(b), for the landlord to wait for a 1 Month Notice, once issued, to take effect over a thirty day period.

For the reasons outlined above, I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

As the landlord was unsuccessful in this Application, the landlord is not entitled to recover the filing fee for the Application from the tenants. The landlord must bear the cost of the filing fee.

### Conclusion

I dismiss the landlord's claim for an early end to this tenancy and I deny an Order of Possession in this instance.

The landlord is not entitled to recover the filing fee for the Application from the tenants. The landlord must bear the cost of the 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 17, 2014

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Residential Tenancy Branch

