



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

ET, FF

### **Introduction**

This hearing was convened in response to the landlord's Application for Dispute Resolution filed October 17, 2014 for an end to the tenancy earlier than if notice to end were given under Section 47 of the Act.

The hearing was conducted via teleconference and was attended by the landlord and ultimately by the tenant. The hearing also heard testimony from another tenant of the same residential property. The respondent tenant acknowledged receiving the document evidence of the landlord which includes a 10 Day Notice for Unpaid Rent and 5 other documents dated in February and March 2014. The parties participated with their testimony and submissions during the hearing. The parties were also given opportunity to resolve their dispute.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession without the requirement of one (1) month's Notice to End Tenancy - pursuant to 56 of the *Act*?

The landlord bears the burden of proving their claim.

### **Background and Evidence**

The only undisputed testimony in this matter is that the tenancy started October 18, 2013 as a fixed term tenancy with an end date of October 31, 2014.

#### *Landlord's evidence*

The landlord provided that in February 2014 the local Fire Department responded to a call from the downstairs tenant, KK, of an odor of gasoline. The source was located:

the *respondent* tenant's transfer of gasoline from gas container to outdoor equipment - and the matter was resolved. KK notified the landlord. KK again notified the Fire Department 1 week later over the same matter. KK testified that there has not been a similar issue until 8 months later in October 2014. However, KK testified that the relationship between the tenants on the property has been stressed from the outset a year earlier in October 2013. KK claims that the tenant has harassed them over the parking of vehicles about the residential property, and has made verbal threats over the parking issue. KK also claims the tenant has periodically turned off the electric service or the heat to their unit, which the tenant can control from their unit. KK claims that on one occasion in early October 2014 the tenant placed a speaker near a common door and the music from it was on all day, disturbing KK. The following week KK claims they witnessed the tenant spilling gasoline or solvent on the ground. During the tenancy KK claims the tenant has withheld their mail, been dishonest with them, and also threatened to kill them. KK claims the tenant has a criminal record and therefore they are generally afraid of the tenant vis-a-vis the conflict relationship and perceive the potential for harm. KK testified that they have kept the landlord informed of their concerns since the outset of the tenancy. Currently, KK has electric power, but insufficient heat, and claims the respondent tenant appears to be in the process of vacating.

In March 2014 the landlord and the tenant exchanged communication respecting certain claimed breaches of the tenancy agreement and the landlord's request of the tenant to be more mindful toward the basement tenant and more responsible around the residential property. The landlord wrote to the tenant in respect to the use of the proper wood for the wood stove, the tenant's chopping of wood outside the unit on the driveway, the tenant's use of gasoline or solvent, driving on the lawn, and leaving an axe outside in sight.

In late March 2014 the landlord and tenant exchanged more disputatious communication and claims the tenant was assaultive: tried to push them and yelled at them during the landlord's inspection of the property - to which, the landlord firmly requested the tenant to stay away. The landlord claims that the tenant "has damaged and continues to cause damage to the property". Despite the tenant's testimony they have found alternate accommodations and are slowly removing belongings from the property and will be fully moved by November 20, 2014, the landlord seeks an immediate Order of Possession as they don't trust the tenant and are concerned the tenant can and will be violent if their tenancy is not ended immediately. Effectively, despite the dated nature of the landlord's concerns they seek to end the tenancy due to their lack of confidence in the tenant - forthwith.

The landlord testified that they have never contemplated giving the tenant a Notice to End Tenancy for Cause as they determined that the test for such a Notice is high and therefore chose to support the tenancy until the end of the fixed term – October 31, 2014, but the tenant said they would not move.

### *Tenant's response*

The tenant testified they are in midst of vacating and do not oppose an end to the tenancy. Regardless, they dispute all of KK's claims and that any early issues with the landlord have not caused further strife. They acknowledged having a criminal record but that it is irrelevant. They testified they have never threatened to kill KK and are very concerned about the assertion, have never tampered with KK's mail, and have never manipulated the electric power or the heat. The tenant explained that they are a construction trades person and have experience with utility and construction standards and that the house suffers from an abundance of Electric Code issues which have periodically tripped the electric breakers due to faulty wiring. The tenant testified that they have the thermostat in their unit and it is kept at 21C, but will increase it to 23C or 24C for the sole benefit of the basement tenant as they will rarely be there here on. The tenant disputes that he has been dishonest in dealings with KK or the landlord and that their fears of harm from him are baseless. The tenant also testified they don't foresee contributing to any further issues before they fully vacate – which they aim to do 2 weeks from this hearing.

### **Analysis**

On preponderance of all the evidence in this matter I find the following. I find that **Section 56** of the *Act* is two-fold, in that it allows a landlord to request an end to a tenancy and for an Order of Possession without providing a 1 Month Notice to end, *if the landlord has cause to end the tenancy and that 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 to be effective.*

Based on all the evidence submitted, I find it was available to the landlord to give the tenant a 1 month notice to end the tenancy during the last year of the tenancy if the landlord thought they had valid cause, but determined they did not have sufficient cause. It must be noted that the parties of this matter are currently embroiled in competing disputes over claims of unpaid rent and other claims of loss: set before a future hearing; which, I am certain has done little to soften the issues before this hearing. None the less, I find that the landlord's claims are largely dated by 9 months, vague, and rooted in the poor relationship between their tenants and claims of KK.

On careful reflection of all testimony and other evidence advanced, I find the evidence of the landlord and their witness, while sincere, is insufficient to prove that the tenant: *put the landlord's property at significant risk, caused extraordinary damage to the residential property*, and has failed to satisfy me that the tenant has done any of the items highlighted in **Section 56** of the Act so as to justify an immediate end to the tenancy. Additionally, I do not find *sufficient* evidence in this matter establishing that it would be unreasonable and unfair to the landlord and other occupants of the residential property to wait for a Notice to End tenancy issued under Section 47 to take effect.

As a result of all the above, **I dismiss** the landlord's application for an early end to the tenancy.

### **Conclusion**

The landlord's application **is dismissed**. The tenancy continues subject to a Notice effective to end the tenancy.

**This Decision is final and binding on both parties.**

*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 10, 2014

---

Residential Tenancy Branch

