



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant indicated that he had received a notice of registered mail from Canada Post but because it did not have a name on the notice he was not sure it was for him and he did not attend Canada Post until 3 days before the hearing. He testified that he had submitted evidence in response to the landlord's Application on February 26, 2015 (the day before this hearing), I have not yet received this evidence.

As the landlord served the tenant with the notice of hearing package and his evidence by registered mail and the tenant chose not to go to Canada Post to pick up the registered mail I find the landlord has sufficiently served the tenant with the hearing package as is required and it was the tenant's actions the delayed him from receiving it. As such, I found the hearing could proceed and that since I had not received his evidence it would not be considered.

I did note, for the benefit of both parties, that the burden of proof is on the applicant, in this case the landlord, to provide sufficient evidence to establish first that he has cause to end the tenancy and secondly to establish that it would be unreasonable to wait for a 1 month notice to end tenancy for cause to take effect.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice, pursuant to Section 56 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord testified the tenancy began on October 1, 2013 as a 6 month fixed term tenancy that converted to a month to month tenancy on April 1, 2014 for a monthly rent of \$700.00 due on the 1<sup>st</sup> of each month.

The landlord submits the tenant informed him on January 31, 2015 that there was a mould problem in the rental unit and that the tenant subsequently refused the landlord's agents to access to the rental unit to complete work to help remedy the problem. The landlord submits the tenant prevented the landlord's agents on at least 3 occasions. The landlord also acknowledges that the tenant is now allowing his agents access.

The tenant acknowledges that he had restricted access to certain individuals because they are not certified to complete mould remediation work. The tenant submits that the landlord is now using certified people and he has no objection to them accessing the unit.

Both parties provided additional testimony regarding other issues throughout the tenancy however, I have not recorded this testimony as I find it is not relevant to the issues in this Application.

### Analysis

Section 56(1) of the *Act* states a landlord may submit an Application for Dispute Resolution to see an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause).

Section 56(2) states the director may grant an order of possession based on such an application if:

- a) The tenant or a person permitted on the residential property by the tenant has:
  - 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 rental unit or residential property; and

- b) It would be unreasonable, or unfair to the landlord or other occupants, to wait for a notice to end the tenancy under Section 47 to take effect.

While I accept that the tenant did, initially interfere with the landlord's right to maintain and repair the rental unit which could result in putting the landlord's property at risk, I find that neither the interference nor the risk was significant. I also find that the tenant has now taken steps to end his interference. As such, I find the landlord has not established sufficient cause to end the tenancy.

Further, I find that even if the landlord had established a cause to end the tenancy he has provided no evidence to establish that it would be unreasonable or unfair to wait for a 1 Month Notice to End Tenancy for Cause issued under Section 47 to take effect.

I do, however, caution the tenant that he does not have the right to restrict or dictate who the landlord may engage to make repairs to the rental unit.

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

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: February 27, 2015

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Residential Tenancy Branch

