



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and for an early end to the tenancy.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery on March 29, 2015. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy early?

### Background and Evidence

This tenancy started on August 1, 2014 as a month to month tenancy. Rent is \$380.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$190.00 at the start of the tenancy.

The Landlord said they have applied for an early end to the tenancy because the Tenant is smoking in the building and there has been two fire incidents caused by the Tenant. The Landlord said the fire department was called in each incident. The first incident involved a stove fire when the Tenant went to sleep while cooking. The second incident was in March, 2015 when the Tenant fell asleep in a chair smoking and the chair caught fire. The Property Manager said she is scared that the Tenant will cause a fire because he ignores the no smoking rule in the rental complex. The Property Manager said the Tenant is putting her and other occupants of the building at risk of a fire. The Landlord provided both fire reports as evidence that the Tenant was responsible for both fire incidents. The Landlords requested an Order of Possession for as soon as possible.

The Tenant's Advocate said the hydro in the Tenant's rental unit has been turned off and he requested the Landlords repair the power to the rental unit immediately.

The Property Manager said she was not aware that the power was off in the Tenant's rental unit and she would have the power repair today.

The Tenant said that he was the cause of both fire incidents and that he does smoke in the rental unit, but when he smokes it is mostly by the window. The Tenant continued to say that he is planning to move out of the unit by the end of the month.

The Landlord said they would like an Order of Possession for as soon as possible if their application is successful, but as the Tenant has paid his rent to the end of the month they can end the tenancy at the end of the month if he stops smoking in the complex.

### Analysis

Section 56 of the Act says a Landlord may make an application to request an order to end a tenancy early if the Tenant significantly interfered with or unreasonable disturbs other occupants or the landlord, seriously jeopardizes the health or safety of other occupants or the landlord, put the landlord property at significant risk, jeopardizes the lawful right of other occupants, caused extraordinary damage to the property or that it would be unreasonable or unfair for a landlord or other occupant to wait for a notice to end tenancy.

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. Section 56 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk. Or that it would be **unfair** for a landlord or other occupant to wait for a notice to end tenancy.

In this case the Landlord has provided affirmed testimony and written evidence that the Tenant has put the rental unit and the rental complex at risk of fire by disregarding the no smoking rules of the rental complex. I accept the Landlord's testimony and the Fire Department Reports that there is a fire hazard that has been created by the Tenant and that it has reached the level of **unreasonableness, significance or seriousness as defined by section 56 of the Act**. As well it would be **unfair** to require the Landlord to wait for the effective vacancy date of a 1 Month Notice to End Tenancy for Cause as a fire could happen at any time. I award the Landlords an Order of Possession effective 2 days after service of the Order on the Tenant. The Landlords have agreed to continue the tenancy until the end of the month if the Tenant does not smoke in the rental unit or

the rental complex. If the Tenant smokes in the rental unit or complex the Landlord is at leave to serve the Order of Possession early than the end of the month.

As the Landlords have been successful in this matter I order the Landlords to recover the filing fee by retaining \$50.00 of the Tenant's security deposit at the end of the tenancy.

### Conclusion

The Landlord's application for an early end to tenancy is granted.

I find, pursuant to section 56 of the Act, that the landlords are entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: April 20, 2015

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Residential Tenancy Branch

