



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on March 20, 2015 to end the tenancy early and obtain an Order of Possession.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance by the Tenants during the 33 minute duration of the hearing or any submission of written evidence prior to the hearing.

As the Tenants failed to appear for the hearing, I turned my mind to the service of the Application and Notice of Hearing documents (the "hearing package"). The Landlord testified that the hearing package and his evidence was served to one of the Tenants referred to as "KB" (the full name of whom appears on the front page of this decision) by registered mail on March 23, 2015; the Landlord provided the Canada Post tracking number as evidence for this method of service.

As a result, I find the Landlord served KB with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). Section 90(a) of the Act states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Therefore, I find that the Tenant was deemed to be served with the required documents on March 28, 2015 pursuant to the deeming provisions of the Act.

The Landlord testified that he personally served the other Tenant, referred to as "AR" (the full name of whom appears on the front page of this decision) with the required documents on March 20, 2015. Based on the Landlord's undisputed oral testimony, I accept that AR was served with the required documents for this hearing pursuant to Section 89(1) (a) of the Act.

In the absence of any evidence provided by the Tenant, the Landlord's undisputed evidence presented during the hearing was carefully considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

The Landlord testified that this tenancy started on June 1, 2012 with a written tenancy agreement for a month to month tenancy. Rent is currently payable by the Tenants in the amount of \$1,200.00 on the first of each month. The Landlord confirmed that the Tenants had not yet paid rent for April 2015.

The Landlord alleged that the Tenants were running an illegal adult escort service from their rental suite which had been converted for this purpose. The Landlord pointed to letters which had been issued to the Landlord by the strata council of the building containing the rental suite. In a letter dated September 11, 2014 the strata council write that they have received a complaint on July 15, 2014 concerning the Tenants of his rental suite. The letter states in part, that the details of the infraction are:

*"A Resident of the above noted unit has been carrying out illegal activities in the above noted rental unit i.e.: the Resident is operating an adult escort service."*

[Reproduced as written]

The letter continues to detail the Landlord's obligation in respect to the use of the property and ensuring that the owner, tenant, occupant or visitor must not use the property in a way that causes a nuisance or hazard to other people, interferes with the rights of other persons to enjoy the common property, and is illegal.

The Landlord explained that as a result of this infraction he was issued with a fine of \$200.00 by the strata council. The Landlord testified that he had previously contacted a member of the strata council about the allegations by e-mail to get more details. In response, he was informed that the strata had conducted an investigation. The e-mail correspondence which was provided into written evidence states the following:

*"The infraction letter was based on a report from building staff, who noticed the female resident coming down to the lobby multiple times to bring different males back to the unit. A website advertising escort services was also found which had*

*pictures of the resident, and when the phone number was called she provided the buzzer for the unit.”*

[Reproduced as written]

However, I note that in the same e-mail correspondence provided by the Landlord, the Tenants write to the Landlord asking for information from the strata council regarding the complaint and what evidence they had to support their claim. When the Landlord was asked about this during the hearing, the Landlord replied stating that the only information he got from the strata council was the above response.

The Landlord testified that the Tenants continued this illegal activity. As a result he was issued with another letter dated October 24, 2014. This letter explained that the details of the infraction were:

*“A Resident of the above noted unit has been carrying out illegal activities in the above noted rental unit. A female Resident has been observed escorting various male visitors to the suite on a daily basis. Please note that you have been issued with the same bylaw infraction before...”*

[Reproduced as written]

The Landlord explained during the following months after this letter had been issued to him, he spent a significant period of time involved with dispute resolution proceedings against the Tenants for nonpayment of rent. While this was going on, the Landlord explained that he continued to receive complaints from neighbours of the Tenants regarding the escort services.

The Landlord testified that on February 22, 2015 he attended the rental suite and took photographs to support his allegation that the Tenants were running an adult escort business. The Landlord pointed to this evidence and explained that the photographs showed a metal pole in the middle of the living room which had been attached by the Tenants to the floor and ceiling; this was not present at the start of the tenancy.

The Landlord also pointed to rope lighting along the floor and walls of the living area shown in the photographs which he suggested was for mood lighting for the illegal activity. The Landlord referred to photographs taken inside the rental suite which showed naked women with weapons. The Landlord submitted that this was all evidence to support the strata council's evidence that the Tenants were running an adult escort service from the rental suite.

### Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the Landlord when the circumstances of the tenancy are such that it is unreasonable for a Landlord to wait for the effective date of a notice to end tenancy to take effect. An Application for an early end of tenancy does not require the Landlord to give the Tenant a notice to end tenancy; however, it does require the Landlord to meet the burden to prove the Application with sufficient evidence to justify the ending of the tenancy early.

As a result, I turn my mind to the Landlord's evidence in making my findings. In relation to the two strata infraction letters provided by the Landlord, I find that these are not sufficient evidence to show that the Tenants are engaging in the alleged activity. The Landlord has failed to provide sufficient evidence of this allegation and/or has failed to obtain from the strata the evidence they relied upon to issue the Landlord with the fine. The Landlord did make a request from the strata council for the evidence but this has not been provided into written evidence before me. Therefore, in the absence of any direct evidence provided by the Landlord of the incidents described in the strata letters, I find that a warning letter and a fine letter to the Landlord is not sufficient evidence that the Tenants have engaged in this activity. As a result, I place little evidentiary weight on this portion of the Landlord's evidence.

In relation to the Landlord's photographic evidence, I find that a Tenant cannot be prohibited from having a metal pole or nude photographs in their rental unit. While this may be indicative of an adult escort service as suggested by the Landlord, I find that it is not **sufficient** evidence alone that an illegal activity is taking place in the rental suite. Therefore, again I have placed little evidentiary weight to this evidence.

The evidence indicates that the Tenants had requested information from the strata council via the Landlord, for the evidence on which the strata had based their decision and information on where the complaint had emanated from; however there is no evidence before me that this was provided to the Tenants or for this hearing. Neither is there any evidence that the Landlord has attempted to deal with this issue with the Tenants directly through a formal breach or warning letter.

The Landlord testified several times during the hearing that he had received complaints from neighbours about the alleged activities of the Tenants and that this was disturbing them. However, the Landlord provided no evidence in the form of witness testimony or statements to verify or support his oral testimony.

I find the Landlord's evidence is weak at best and that two strata letters making allegations against the Tenants which were not proven in this hearing, and photographs that are suggestive in nature are not sufficient on this occasion to satisfy me that the tenancy should end early. Therefore, I dismiss the Landlord's Application to end the tenancy early.

However, the Landlord is at liberty to issue the Tenants with a formal breach letter for the allegations that have been made and put them on notice for any correction. If the Landlord feels that the issues are continuing, the Landlord is at liberty to use the remedies under the Act to deal with the situation. The Landlord must be able to provide conclusive and sufficient evidence to prove the allegations being made when seeking to end the Tenants' tenancy through dispute resolution.

### Conclusion

The Landlord's Application for an Order of Possession to end the tenancy early is dismissed.

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 09, 2015

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Residential Tenancy Branch

