



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

The landlord has applied for dispute resolution of a dispute in the tenancy at the above address and requests an order pursuant to section 56(1) of the Residential Tenancy Act for the early termination of the tenancy and an order of possession.

### Issue(s) to be Decided

Is the landlord entitled to an Order for Possession pursuant to section 56 of the Act?

### Service

Only the landlord's agent SS attended the conference call hearing. SS testified that the application for dispute resolution was served by registered mail on June 3, 2016. The landlord provided a tracking number from Canada Post. Based on the landlord's evidence and with reference to Canada Post's web site I found that the tenant was served on June 3, 2016.

### Background and Evidence

SS testified that the fixed term tenancy began on June 30, 2014 with rent amounting to \$ 525.00. SS testified that the tenant who is 75 years old is a compulsive smoker and has caused significant damage to his unit and own possessions. He is also frail and has difficulty taking care of himself. The tenant has received numerous warnings but has continued to smoke.

The landlord's agent SS testified about two recent incidents of concern. On April 11<sup>th</sup> the tenant set an unattended pot on his stove on fire as he fell asleep in the bathroom while smoking. The entire building was filled with smoke and many occupants were concerned. On May 8, 2016 the tenant set himself on fire while he was smoking in bed. The fire department attended and the deputy chief wrote a letter dated May 19, 2016 in which after observing numerous burn marks in the unit and opined that the tenant poses a "personal injury and safety risk to both himself " and the other tenants residing at the building because of his smoking. SS testified that the tenant was moved out of the unit by VIHA to a temporary shelter until permanent assisted housing can be found. The tenancy agreement is a fixed term tenancy ending on June 30, 2016 and it requires the tenant to move out on June 30, 2016. SS testified that he landlord will not be renewing the tenancy. SS testified that although it is not likely the tenant will return before the end of the tenancy, he is mobile on a scooter and SS is concerned that he may return to his unit and continue his dangerous activity. SS wishes an Order for possession to prevent that possibility and to protect the other tenants and the landlord's property.

### Analysis

Section 56 of the Residential Tenancy Act states the following:

- (1) A landlord may make an application for dispute resolution to request an order
  - (a) 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 [*landlord's notice: cause*], and (b) granting the landlord an order of possession in respect of the rental unit.

Before issuing an Order ending the Tenancy under section 56 a Dispute Resolution Officer must be satisfied under section 56(2)(a), that the tenant or a person permitted on the residential property by the tenant is guilty of doing one or more 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;
- (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 residential property, and

(b) 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 under section 47 *[landlord's notice: cause]* to take effect.

The burden of proof is completely on the Applicant/Landlord, who bears the onus of proving that the tenant did engage in the conduct creating the above conditions and, further, that this conduct is of such an extreme nature and the risk great, that it would warrant an end to the tenancy under section 56(1).

I have determined on the evidence before me the landlord has sufficient grounds for the early termination of the tenancy and that it would be unreasonable for the landlord to wait for a one month notice to end the tenancy for cause. In the circumstances I granted the order of possession of 2 days notice.

#### Conclusion and Order:

I granted the landlord an Order for Possession. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

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: June 21, 2016

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Residential Tenancy Branch