



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an early end to this tenancy and an order of possession pursuant to section 56; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1118 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 30 June 2016 by registered mail. The landlord provided me with a Canada Post tracking number for the mailing. The agent informed me that the tenant did not retrieve the mailing. The agent testified that the owner of the rental unit attended at the rental unit on 16 July 2016 and verbally informed the tenant of this hearing.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* sets out that service cannot be avoided by failing to retrieve the mailing:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In accordance with sections 89(1) and 90 of the Act, the landlord was deemed served with the dispute resolution package on 5 July 2016, the fifth day after its mailing.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 November 2015. Monthly rent in the amount of \$1,650.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$825.00.

On 24 June 2016, the landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The 1 Month Notice was dated 24 June 2016 and set out an effective date of 31 July 2016. The 1 Month Notice set out that it was given as

- the tenant or person permitted on the property by the tenant has put the landlord's property at significant risk; or
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; and
- the tenant has caused extraordinary damage to the unit.

The agent testified that the tenant was arrested and charged with trafficking controlled substances. In the course of the arrest the police entered into the rental unit by force. This force resulted in damage to the door of the rental unit. The landlord provided me with photographs of the damage to the door from the forced entry.

The agent testified that the owner and the owner's family are going to move into the rental unit. The agent testified that the owner and tenant entered into a mutual end to tenancy effective 31 July 2016. The agent testified that the owner of the rental unit had made an arrangement with the tenant to store belongings in the garage of the rental unit. The agent testified that the owner no longer feels safe storing belongings in the garage because of the tenant's criminal charges.

The agent testified that, in addition to the damage to the door, the tenant has stained the carpet with what appears to be red wine.

The agent testified that the tenant is not “attracting quality individuals” in the neighbourhood.

### Analysis

In accordance with section 56 of the Act, in receipt of a landlord’s application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord’s property in significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord’s property;
  - 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
  - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be “unreasonable or unfair” to wait for a cause notice to take effect.

In this case there is a 1 Month Notice with an effective date of 31 July 2016. The effect of the landlord’s application for an early end to tenancy is to end the tenancy, at the earliest, on 23 July 2016 (the earliest possible enforcement date of an order of possession issued on today’s date).

The tenant's involvement in trafficking of controlled substances caused the damage to the landlord's property. But for the tenant's illegal activity, the police would have certainly not entered the rental unit in that manner—resulting in the broken door. For this reason, I find that the tenant has engaged in illegal activity that has caused damage to the landlord's property.

The second part of the test for early end to tenancy requires that it would be unreasonable or unfair for the landlord to wait for the 1 Month Notice to take effect. The 1 Month Notice takes effect ten days from the date of the hearing. On the evidence provided by the landlord it does not appear that there is any urgency to the situation other than the convenience to the owner in accessing the garage prior to the end of the month and the owner's general unease relating to the tenant's criminality. These reasons are not sufficient to warrant an early end to the tenancy. The nature of the damage is such that it would not be unfair or unreasonable for the landlord to wait for the 1 Month Notice to take effect on 31 July 2016.

The landlord's application for an early end to tenancy is dismissed.

As the landlord was not successful in this application, it is not entitled to recover the filing fee paid from the tenant.

### Conclusion

The landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 21, 2016

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Residential Tenancy Branch