



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            ET, FF

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession to end the tenancy early and without notice.

The hearing was conducted via teleconference and was attended by both landlords.

The landlords provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on August 31, 2017 in accordance with Section 89 and that this service was witnessed by a third party.

Based on the testimony and documentary evidence submitted by the landlords, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing I clarified with the landlords what the correct name for the male landlord is and I have amended the landlords' Application for Dispute Resolution to reflect the male landlord's correct legal name.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession to end the tenancy early for cause and without notice; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 56, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on March 31, 2017 for a tenancy with a monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$625.00 paid. The agreement stipulated that the tenancy would continue until such time as the tenant F.A.'s health needs exceed homecare abilities.

The landlord testified that the tenant F. A. has now been moved into an extended care facility. In support of this submission, the landlords have provided a copy of an Ending Fixed-Term Tenancy Confirmation Statement dated August 22, 2017 confirming the tenant is eligible to end a fixed term tenancy for this reason.

The landlord submitted into evidence a copy of a Mutual Agreement to End a Tenancy form signed by the tenant F.A.'s power of attorney agreeing that the tenancy will end on August 31, 2017. The landlord also submitted a copy of a letter dated August 13, 2017 and another letter dated August 14, 2017 addressed to the tenant W. A. Both letters contained the same content but were not mechanically reproduced copies. The letters stipulated that the landlord had received the Mutual Agreement to End a Tenancy form and the tenant W.A. would have to vacate the property no later than August 31, 2017.

The landlord testified that on or about August 13, 2017 the tenant W.A. assaulted the tenant's sister (and daughter of the tenant F.A.) who is a neighbour of the residential property. The landlords have submitted a copy of a report from a local hospital regarding the neighbour/sister recording injuries resulting from an altercation with her brother. The report also records the following statement:

"Apparently there is a long-standing issue with her brother and the police have been involved in the past. The patient's husband says that the brother bore the worst of the altercation today, and according to police, the patient herself could be charged for assault."

The report further recorded the injuries, the patient felt safe returning to her home with her husband and that the police had been involved.

The landlord testified the tenant W.A. has informed them that he does not intend to move out of the rental unit and that "if I'm going down you are going down too".

The landlords submit that they have contacted police who advised them that the issues are a tenancy matter and they would not get involved. The landlords submit that they are afraid to attend the property and the latest they have heard from the neighbour (tenant W. A.'s sister) is that they have heard sawing in the rental unit.

The landlords have concerns that illicit drugs are being used on the property; that friends of the tenant may be moving into the unit; receptacles have been removed from the walls without informing the landlord; the locks to access doors have been changed and they are unsure if the smoke detectors are working or even connected. The landlords also submitted that the tenant has not paid any rent.

### Analysis

Section 1 of the *Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. While I accept that the parties had agreed to the tenancy ending when the tenant F. A. required more intensive care the tenancy agreement did not provide a specific date as to when it was to end. As such, I find the tenancy is a month to month tenancy and not a fixed term tenancy.

Section 44 of the *Act* allows that a tenancy may be ended in the following ways:

- (a) The tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) Section 45 [tenant's notice];
- (i.1) Section 45.1 [tenant's notice: family violence or long-term care];
- (ii) Section 46 [landlord's notice: non-payment of rent];
- (iii) Section 47 [landlord's notice: cause];
- (iv) Section 48 [landlord's notice: end of employment];
- (v) Section 49 [landlord's notice: landlord's use of property];
- (vi) Section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) Section 50 [tenant may end tenancy early];
- (b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) The landlord and tenant agree in writing to end the tenancy;
- (d) The tenant vacates or abandons the rental unit;
- (e) The tenancy agreement is frustrated;
- (f) The director orders that the tenancy is ended.

Section 56(1) of the *Act* allows a landlord may make an application for dispute resolution to request 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 [landlord's notice: cause], and granting the landlord an order of possession in respect of the rental unit.

Section 56(2) states the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

- (a) The tenant or a person permitted on the residential property by the tenant has done any 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.

While I accept that the tenant and his sister who is a neighbour to the residential property had an altercation, from the submissions provided I find the landlords have provided insufficient evidence to establish that the altercation between the two was related to this tenancy. Furthermore the landlords have no obligation under the *Act* to ensure quiet enjoyment for neighbours of this residential property, as it is a self-contained property.

I am not persuaded, from the landlords' oral submissions that the comment attributed to the tenant to the landlords constitutes a threat. Despite the landlord's submissions regarding police involvement, I find, on a balance of probabilities, it is unlikely that police would have not probed further into any potential of harm or danger to the landlords if they had been advised of any possible threat.

I also find the landlords have submitted that they themselves are uncertain of the condition of the rental unit and that they do not know what the tenant may have been saying as heard by the tenant's sister. As such, I find this evidence is insufficient to establish a cause to end the tenancy at this time.

As a result of these findings above, I further find the landlords have failed to establish a cause to end this tenancy and if there were such a cause that it warranted ending the tenancy without the benefit of issuing a One Month Notice to End Tenancy under Section 47 of the *Act*, pursuant to Section 56.

While the landlords have raised the issue that they have a mutual agreement to end the tenancy and that the tenant has not paid rent for the month of September, which may entitle the landlords to an order of possession, they have not provided sufficient evidence to establish that they would be entitled to one under Section 56 of the *Act*.

### Conclusion

Based on the above, I dismiss the landlords' Application for Dispute Resolution in its entirety and without leave to reapply.

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: October 2, 2017

---

Residential Tenancy Branch