



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Disputes Codes: ET & FF

### Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An order for an early end to the tenancy on the basis that the tenants are posing an immediate and severe risk
- b. An order to recover the cost of the filing fee.

The tenants filed an Application for Dispute Resolution. A search of the Registry indicates that is set for hearing in the second week in January 2018. It will not be dealt with in this hearing.

A hearing was conducted by conference call in the presence of agents from both parties. The Agent for the landlord testified the landlord would not be attending the hearing as she is at school. The agent for the Tenants testified they were involved in an accident returning from the interior and could not attend. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where they reside. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for the early termination of the tenancy and an Order for Possession?

- b Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on September 10, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$4200 per month payable in advance on the 9<sup>th</sup> day of each month. The tenancy agreement provided that the tenants were supposed to pay a security deposit of \$2100 but that cheque was returned NSF. The tenants have failed to pay the rent.

The agent for the landlord gave the following evidence in support of the Application for Dispute Resolution:

- The tenants failed to pay the security deposit of \$2100.
- The tenants failed to pay the rent and a 10 day Notice to End Tenancy was served.
- The tenants broke into the basement suite with a knife in hand and threatened the landlord. The break in was caught on the landlord's security camera.

The agent for the Tenants stated she was unfamiliar with the allegation that the tenants broke into the basement suite. She further testified she believed the tenants have paid the rent although she acknowledged she does not have any first hand evidence.

Early Termination of the Tenancy:

Section 56 of the Residential Tenancy Act provides that a landlord may request an Order ending the tenancy that is earlier than the tenancy would end if notice to end were given under section 47 and an order of possession if

56(2) (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.

### Analysis:

After carefully considering all of the evidence presented at the hearing I determined the landlord has failed to present sufficient evidence to establish sufficient cause for an early end to the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause for an early end to the tenancy. This is an extraordinary remedy available to the landlord in certain limited situations. It allows the landlord to have an earlier date for a hearing than what otherwise might be granted.
- The failure to pay the rent or the security deposit is not grounds for an order for the early end to the tenancy. In those situations the landlord must serve one Month Notice to End Tenancy if it involves the failure to pay a security deposit or a 10 day Notice to End Tenancy for the failure to pay rent. If the tenant does not dispute the Notices the landlord must file an Application for Dispute Resolution seeking an Order of Possession in the normal course.
- The landlord failed to present sufficient evidence to establish the Tenant broke into the basement rental unit while in possession of a knife and threaten the landlord. The landlord did not testify at the hearing and failed to present sufficient evidence to prove this allegation. I was not able to access the digital evidence submitted by the landlord. However, in the absence of the first hand testimony of the landlord it is difficult to see how I could use that evidence if the landlord has not presented evidence as to how it was obtained. I determined the landlord failed to meet the evidentiary burden required in the absence of first hand testimony from the alleged victim.

Conclusion:

I ordered that the Application for an order for the early end to the tenancy and the recovery of the cost of the filing fee be dismissed without liberty to re-apply.

The landlord may have grounds to end the tenancy based on the failure to pay rent and the failure to pay the security deposit but the landlord must bring her application in accordance with the Residential Tenancy Act.

**This decision is final and binding on the parties.**

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: December 19, 2017

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Residential Tenancy Branch