



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an early end to tenancy pursuant to section 56 and an immediate Order of Possession for the rental unit; as well as authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant RM testified that she was speaking on behalf of all 5 tenants named by the landlord in this application. The landlord's property manager assisted the landlord with her testimony and acted as the landlord's representative. The tenant(s) confirmed receipt of the landlord's Application for Dispute Resolution. The landlord confirmed that they submitted a total of 3 pages of evidence – each page displaying one photograph.

### Issue(s) to be Decided

Is the landlord entitled to end this tenancy early and receive an Order of Possession?  
Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The parties agreed that this tenancy began July 2016. The parties agreed that, at the outset of this tenancy, Tenant RM was hired to manage the landlord's properties. A portion of tenant RM's monthly pay for employment would be deducted to pay the monthly rent. According to the testimony of the representatives for each party, neither the employment nor the residential tenancy agreements were made in writing. Despite canvassing both parties during the course of the hearing, determining the amount paid by the tenant for rent was impossible to determine. The landlord testified that the tenant received verbal notice that her employment was terminated in March 2017. Neither the landlord nor the landlord's assistant/property manager were able to provide the specific date when tenant RM received notice of the termination of her employment.

The landlord testified that the evidence of this change from employee/tenant to simply tenant was reflected in a change to the rental amount for the unit. This change to the amount of rent owed per month was not documented by the landlord, according to her testimony: the agreements between the parties were verbal only. The tenant testified that, until receiving the landlord's Application for Dispute Resolution, she continued with her management duties.

The landlord testified that there have been repeated problems with the cleanliness of the residence over the course of this tenancy. The landlord testified that the tenants, as a group, repeatedly leave an excessive amount of garbage on the property that she has had to remove. She wrote that, as a result of the garbage and refuse outside of the residence, the city representatives told the landlord that the property will be condemned if it is not cleaned up. The landlord did not have written or documentary evidence to provide with respect to her conversations with the city.

The landlord wrote in her application and testified that the tenants have threatened her and chased her off the property on occasion. She testified that she has called the police with respect to the threats and assaults at the property but has no pending files with the police. The landlord testified that the tenant and other occupants of the rental unit have broken windows on the property. She testified that the windows were broken in the summer of 2017. The landlord testified that the lock on the downstairs storage at the residence has been broken into and items stolen. The landlord testified that she has also contacted the police regarding the break-in to the storage unit area. The landlord testified that the police are investigating the tenants however she did not provide any paperwork with regards to the investigation. The landlord also testified that the hydro meter at the residential premises has been tampered with and that the hydro agency is investigating for evidence of fraud in relation to hydro consumption at the rental unit.

The landlord testified that one of the tenants (Tenant TK) who was not in attendance at this hearing was shot at the rental unit approximately 6 days prior to the hearing. While the tenants disputed the allegations by the landlord regarding the cleanliness of the residence, the threats to the landlord, the tampering with the hydro unit and the break-in at the storage area, the tenants did not dispute the landlord's testimony that one of the tenants was shot at the rental unit 6 days prior to this hearing and that he remains in hospital as a result of his injuries.

The landlord testified that the tenant has failed to pay rent in full each month since she has discontinued managing the property however she acknowledged that she understood that this was not evidence to raise in a hearing regarding an emergency, early end to the tenancy.

The tenants disputed most of the landlord's testimony. Tenant RM testified that she was not fired from her job as property manager but that the job had been reduced because the landlord had sold some of her property. Tenant RM testified that none of the tenants have threatened the landlord. She submits that the landlord would remember dates and time if she had been threatened. Tenant RM testified that none of the tenants have been contacted by the police in relation to any pending investigation at the rental unit premises.

Tenant RM testified, on behalf of all of the tenants that they had not tampered with or fraudulently acquired hydro services. She testified that half the time the hydro is switched off as a result of the landlord's failure to pay the bill. Tenant RM testified that the storage break in was not done by any of the tenants and that the windows were not broken by the tenants. She testified that neither of these issues (the break in or the windows) are recent occurrences – that they date back to the summer of 2017. She also testified that neither she nor any of the other tenants/occupants have been contacted by the police, the city or hydro with respect to ongoing investigations.

Tenant RM and Tenant SC (who testified briefly) both confirmed that Tenant TK had been shot on December 26, 2017 at the rental unit home however both Tenant RM and Tenant SC testified that the shooting was random and unexpected. Tenant RM testified that none of the named tenants have been involved in criminal activity. She submitted that she and her co-tenants should not be evicted because of a "random act of violence".

### Analysis

According to the testimony of the representatives for each party, neither the employment nor the residential tenancy agreements were made in writing. Despite canvassing both parties during the course of the hearing to clarify the amounts paid by all of the tenants for rent, the rental amounts were unclear at the end of this hearing. The landlord's lack of documentation of this tenancy and the employment of Tenant RM make factual determinations increasingly difficult, particularly when the tenants dispute the testimony of the landlord and her current property manager. I will not address the matter of rent payment further as it is not a ground upon which to end a tenancy early. However, I note that the landlord's lack of undisputed and substantiated evidence gives rise to a consideration of section 59 of the Act regarding particularization of one's claim as well as a consideration of the credibility of the parties at this hearing.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself. In the case of an early end to tenancy, a landlord may present evidence in a variety of manners and there may be a consideration of testimony in urgent matters however the landlord/applicant, as always bears the burden of proof.

I am unsatisfied with the evidence presented by the landlord. I find that the landlord set out insufficient details that the tenants could have known all that she would be required to respond to in this dispute resolution hearing.

In her application, the landlord wrote, "The tenants threaten to kill me and chase me off my property. The police have to go with me to my property. They have broken the windows and

damage inside which I can't get into to look at what all has been damaged." At the hearing, the tenants denied these allegations. The landlord's only documentary or physical evidence submitted for this hearing consisted of 3 blurry black and white photographs: she testified that two represent broken windows and 1 is a photograph of a hydro meter.

I find that I have been provided with insufficient evidence by the landlord to make a determination that the tenants have either; threatened or chased the landlord; fraudulently obtained hydro services; broken into a storage shed; or broken exterior windows of their own residence. I find that the landlord has not provided sufficient evidence or testimony satisfactory to prove any of these allegations.

I will narrow the scope of the proceedings to consider further only whether the agreed upon facts regarding a shooting at the residence are sufficient to end the tenancy early.

With respect to the remaining consideration, it is important for me to weigh the credibility of each party in relation to this matter. After consideration of all the testimony at this hearing, I accept the testimony of Tenant RM. Tenant RM testified in a calm and clear manner. Her explanations regarding the circumstances of this tenancy were logical and supported by the testimony of her fellow tenant, Tenant SC.

I note that the tenant, speaking on behalf of all of the tenants, was adamant and clear in her denial of certain allegations made by the landlord but that she was candid with respect to the shooting at the residence. The tenant also supported some of the landlord's testimony by virtue of candid submissions, acknowledging that the tenant was aware that the landlord's identification had been stolen and other admissions incidental to the landlord's application. The tenant's agreement with some of the landlord's submissions was given at this hearing with the knowledge that the landlord did not have documentary evidence to prove her statements.

Section 56 of the Act addresses an application for an early end to a tenancy. In order to be successful in an application for an early end to tenancy, a landlord must prove that "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 with section 47 [landlord's notice: cause] to take effect." I find that the landlord has not met the burden of proof to show that one of the tenants or someone let on the property by the tenants:

- significantly interfered with another occupant or the landlord;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that has resulted in one of the above listed consequences; or
- that the tenant has caused extraordinary damage to the property.

The landlord's dispute resolution application states that the current rental situation causes an immediate risk to property, occupants or the landlord requiring urgent action to end the tenancy.

I find that the landlord's evidence and testimony are insufficient to satisfy me that the tenancy should end. I find that the landlord did not provide any documentary evidence regarding investigations of the tenants and the rental property - hydro, city or police. And, with regard to the shooting at the residence, which occurred 2 months after the landlord applied for an early end to tenancy and was therefore not the impetus for this application, the landlord has provided no evidence that the shooting is as a result of some action, negligence or otherwise general risky behaviour by the tenants or someone allowed on the property by the tenants. The landlord did not, I find submit any evidence regarding this recent incident to show that it was as a result of some action or inaction by the tenants.

I find that the landlord lacks documentary support or oral testimony that sufficiently supports the claims made within the application for an early end to the tenancy. I dismiss the landlord's application for an early end to tenancy based on the insufficiency of evidence submitted by the landlord as well as the landlord's failure to present a ground that meets the standards of section 56 of the Act. As the landlord has been unsuccessful in their application, the landlord is not entitled to recover the filing fee.

#### Conclusion

I dismiss the landlord's application in its entirety.

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: January 11, 2018

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Residential Tenancy Branch