



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession pursuant to section 56 of the Act. The landlord's agent appeared at the hearing but the tenant did not. The landlord submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant via registered mail on January 17, 2018. A search of the tracking number showed that the registered mail was unclaimed by the tenant. Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I found the tenant was deemed to be served with the hearing documents on January 22, 2018 and I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord is entitled to an Order of Possession under section 56 of the Act?

### Background and Evidence

The tenancy started on May 31, 2013. The monthly rent was set at \$1,200.00 payable on the first day of every month; however, the tenant's rent obligation is much lower since the rent is subsidized. The tenant paid a security deposit of \$300.00. The rental unit is an apartment in a multiple unit building.

On January 11, 2018 the occupant of the unit below the rental unit reported to the landlord's agent that there was water coming through his/her ceiling. The landlord's agent knocked on the door of the rental unit but the tenant did not answer. Due to the emergency situation the landlord's agent entered the rental unit to find the tenant was

not home and there was approximately two inches of water on the floor of the rental unit that was the result of the kitchen faucet left on and the sink drain covered by a lid. The landlord's agent turned off the water and efforts commenced to mop up the floor and have fans placed in the unit. The landlord's after hour's emergency response team went to the rental unit later that day to further address the flood damage but the tenant was home at that point and refused entry to the team.

The landlord submitted that the tenant refused entry on January 15, 2018 and that during subsequent meetings the tenant has stated that she will not permit anybody to access the rental unit. The landlord testified that the landlord or its agents have been unable to gain entry to the unit since entry was made in the initial response to the report of water escaping the rental unit.

The landlord submitted that the tenant has hoarding tendencies and that in order to restore the rental unit the rental unit needs to be emptied of most of the tenant's possessions and access needs to be gained so that the unit can be completely dried and repairs made. The landlord explained that baseboards need to be removed, the walls opened up, the cabinets, countertop and flooring need to be removed, and then these items to be re-installed. The tenant's refusal to permit entry to the unit has prevented the unit from being restored and the landlord now suspects that mould has formed in the unit.

The landlord submitted that the landlord seeks to end the tenancy early out of concern for the health and safety of the other occupants of the building and further damage to the property. The landlord stated that the tenant previously left the stove on and left the rental unit, causing damage.

### Analysis

Section 56(2) of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early -- on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early I must be satisfied of the following:

- (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.

[Reproduced as written with my emphasis added]

The landlord bears the burden to prove the tenant has acted in such a way as to warrant an order to end the tenancy earlier than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in severe circumstances.

Based on the landlord's unopposed submissions, I find I am satisfied that the tenant's actions or neglect caused a flood in the rental unit and then refusing the landlord entry to dry the rental unit is likely to have caused or will cause the formation of mould and further property damage. Also considering this is the second event that has caused damage to the property after the tenant left the rental unit, I find I am satisfied that the landlord has demonstrated that the tenant has:

- 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; and,
- that it would be unreasonable or unfair to the landlord or other occupants of the property to have to wait for a 1 Month Notice to take effect.

In light of the above, I grant the landlord's request for an order to end the tenancy early and an Order of Possession.

I provide the landlord an Order of Possession effective two (2) days after service upon the tenant. The tenancy shall end and the tenant must return vacant possession of the rental unit to the landlord two days after receiving the Order of possession.

The Order of Possession may be served upon the tenant in one of the following ways: in person; by posting on the door of the rental unit; by placing it in the tenant's mailbox or mail slot; or by mailing it to the tenant.

I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution. The landlord is authorized to recover this award by deducting it from the tenant's security deposit.

### Conclusion

Pursuant to section 56 of the Act, the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The tenancy shall end and the tenant must return vacant possession of the rental unit to the landlord two (2) days after receiving the Order of Possession.

The landlord is authorized to recover the filing fee from the tenant by deducting \$100.00 from the tenant's security deposit.

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: February 13, 2018

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Residential Tenancy Branch