



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

ET

### Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession and for an early end to the tenancy.

The Property Manager stated that on March 23, 2018 the Application for Dispute Resolution, the Notice of Hearing, and the package of evidence that was submitted to the Residential Tenancy Branch on March 20, 2018 were posted on the Tenant's door. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On March 15, 2018 the Landlord submitted 17 pages of evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence was duplicated in the evidence package that was submitted to the Residential Tenancy Branch on March 20, 2018.

On April 03, 2018 the Tenant submitted 73 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally delivered to the Property Manager on April 03, 2018. The Property Manager stated that this evidence was personally delivered to her on April 04, 2018. As the Landlord acknowledged receiving this evidence, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, although much of it is not relevant to this decision.

### Issue(s) to be Decided

Should this tenancy end early and, if so, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant was an employee of the Landlord when he moved into this rental unit;
- the Tenant moved into the rental unit in November of 2016;
- the Tenant and the Property Manager signed a tenancy agreement for the rental unit, a copy of which was submitted in evidence;
- the tenancy agreement declares that rent of \$1,750.00 was due by the first day of each month;
- the Tenant was not required to pay rent for this rental unit while he was employed by the Landlord;
- the Tenant's employment was terminated in February of 2018;
- the Tenant has paid the rent for March and April of 2018;
- the Tenant has been provided with rent receipts for March and April of 2018 which indicate the rent is being accepted for use and occupancy only;
- on February 28, 2018 the Tenant was served with a One Month Notice to End Tenancy for Cause;
- the One Month Notice to End Tenancy for Cause declares that the Tenant must vacate the rental unit by March 31, 2018;
- the Tenant disputed the One Month Notice to End Tenancy for Cause; and
- a hearing is scheduled for May 25, 2018 to consider the merits of the One Month Notice to End Tenancy for Cause.

The Property Manager stated that the parties signed this tenancy agreement for tax purposes.

When asked to explain why this tenancy needed to ended prior to the hearing scheduled for May 25, 2018 the Director stated, in part, that the Tenant has indicated that he intends to establish a property management business and that the Tenant has approached people in the residential property in an attempt to solicit clients for his new business.

The Tenant stated that he has spoken with owners of the condominiums on the residential property in an attempt to solicit business. The Tenant contends that the Landlord's attempt to end the tenancy is an attempt to eliminate commercial competition.

When asked to explain why this tenancy needed to end prior to the hearing scheduled for May 25, 2018 the Director stated, in part, that the Tenant continues to hold himself out as an employee of the Landlord. He stated that the Tenant attempted to collect rent for March from an occupant in a different residential complex.

The Landlord submitted a copy of an email, dated March 16, 2018, from an occupant of a different residential complex. In this email the occupant declares that she received text messages from the Tenant asking when he could pick up the rent for March. The Property Manager stated that she wrote the email, at the request of the occupant, and that the occupant signed the email.

The Tenant stated that he did not attempt to collect rent for March from the aforementioned occupant. He stated that the occupant does not speak English well and she may not have understood what she was signing when she signed the email dated March 16, 2018.

The Landlord submitted a document labelled #3, in which the Tenant, in part, apologized to his employer for his character in recent months and in which he refers to himself as a liar. The Landlord contends that this letter damages the credibility of the Tenant.

The Tenant stated that he wrote this letter to his employer in an effort to get his job back. He stated that he referred to himself as a liar because he told his employer he was going on a holiday to Hawaii when he actually went to a different location.

Legal Counsel argued that even if the Tenant did attempt to collect rent from an occupant of different residential complex, ending his tenancy in this complex will not prevent him from doing so in the future.

When asked to explain why this tenancy needed to end prior to the hearing scheduled for May 25, 2018 the Head of Security stated that the Tenant contacted a security provider after this employment had ended and attempted to gain access to a secure area. The Tenant denies this allegation.

Legal Counsel for the Tenant stated that the Landlord has not disclosed that this alleged illegal entry was one of the reasons the Landlord is attempting to end this tenancy early. The Director acknowledged that this information was not disclosed in the documents served to the Tenant for these proceedings.

The Landlord was advised that the hearing would need to be adjourned to provide the Tenant with the opportunity to respond to this allegation if the Landlord wished to rely on this allegation to end the tenancy. The Director stated that the Landlord does not want the hearing adjourned and that the Landlord will not rely on this allegation to support the application to end the tenancy early.

### Analysis

On the basis of the undisputed evidence I find that the Landlord entered into a written tenancy agreement for this rental unit; that rent was \$1,750.00 per month; and that he was not required to pay the rent while he was employed by the Landlord.

Section 56(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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;
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

On the basis of the undisputed evidence I find that the Tenant plans to establish a property management business and he has attempted to solicit clients from individuals on the residential property for the purpose of establishing that business. I find that the Landlord does not have the right to end this tenancy, pursuant to section 52(a) of the *Act*, as attempting to solicit clients from the Landlord does not:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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;
- constitute an illegal activity;
- jeopardize a lawful right or interest of another occupant or the landlord; or
- cause physical damage to the residential property.

There is nothing in section 52(a) of the *Act*, in my view, that allows a landlord to attempt to eliminate commercial competition by ending a tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant attempted to collect rent for March from an occupant of a different residential complex. In

reaching this conclusion I was influenced, to some degree, by the Tenant's testimony that the allegation is untrue.

In adjudicating this matter I have placed limited weight on the email, dated March 16, 2018. As this email was actually written by the Property Manager and the undisputed evidence is that the occupant who signed the email does not speak English well, I find it possible that the occupant did not fully understand what she was signing.

In adjudicating this matter I have placed limited weight on letter the Tenant wrote to his employer in which he referred to himself as a liar. I find that the Tenant provided a reasonable explanation for this reference. I further find that establishing a person has lied over a personal matter such as a holiday does not serve to establish that a person would present false evidence at a legal proceeding.

In adjudicating this matter I was influenced, to some degree, by the fact the text message the Tenant allegedly sent to the occupant of a different residential complex was not submitted in evidence. As the Tenant allegedly made the request for March rent by text message, I find that the text message could have been submitted in evidence, with reasonable diligence.

Even if I accepted that the Tenant attempted to collect rent from an occupant of a different residential complex, I cannot conclude that ending this tenancy would have any impact on the Tenant's ability to continue to attempt to collect rent at a different residential complex.

Even if I concluded that the Tenant had attempted to collect rent from an occupant of a different residential complex and that this act constituted grounds for ending the tenancy, pursuant to section 52(a) of the *Act*, I would not end this tenancy early.

Section 56(2)(b) of the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 of the *Act* to take effect.

As there is no evidence that the Tenant continues to hold himself out as an employee of the Landlord or that he has made any attempt to unlawfully collect rent on any other occasion, I cannot conclude that there is an urgent need to end this tenancy. I therefore find it reasonable for the Landlord to wait until May 25, 2018 to determine whether this tenancy will end on the basis of the One Month Notice to End Tenancy for Cause that was served pursuant to section 47 of the *Act*.

I find that the Landlord has not established grounds to end this tenancy early, pursuant to section 56 of the *Act*. I therefore dismiss the Landlord's application to end the tenancy early and for an Order of Possession.

### Conclusion

The application to end the tenancy early and the application for an Order of Possession are dismissed.

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: April 12, 2018

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Residential Tenancy Branch