



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the landlord seeking to end the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing and gave affirmed testimony and called 1 witness who also gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's witness testified that one of the tenants has vacated the rental unit, and the witness was present when the landlord served the remaining tenant with the Hearing Package on April 5, 2018. The witness also resides on the rental property and testified that the tenant gave the package to another person who was at the rental unit, who placed it on the landlord's car. The witness was with the landlord when the landlord sent the package by registered mail on the same day. The other tenant is not permitted on the rental property and asked that his father be served and the witness was present when the landlord met the tenant's father and served the Hearing Package to him.

Where a party is personally served, it is not necessary that the party actually open the envelope. I accept the undisputed testimony of the landlord's witness and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord testified that all of the evidence provided for this hearing was served in the packages provided to each of the tenants. I accept that testimony, and all evidence provided by the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the tenancy should end earlier than a notice to end the tenancy would take effect because 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?

Background and Evidence

**The landlord** testified that this fixed term tenancy began on March 23, 2018 and was to expire on March 31, 2019. Rent in the amount of \$1,800.00 per month is payable on the 1<sup>st</sup> day of each month, but the tenants have not paid any rent. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an upper unit of a side-by-side duplex, and the lower unit is also tenanted. The other side of the duplex is not owned by the landlord. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenants have continued to make unreasonable noise and cause damage, and neighbours want to move out because they are concerned for their safety. Letters from neighbours have been provided as evidence for this hearing which all indicate loud noise coming from the rental unit at all hours which include fighting, screaming, swearing and smashing things. The landlord testified that 3 windows are broken and there's a lot of garbage on the porch.

**The landlord's witness** testified that she has been residing in the lower unit for almost 5 years.

The tenants moved in on March 23, 2018 and were very noisy till about 2:00 a.m., and the witness realized that moving in was noisy. The next day the witness met one of the tenants who apologized for the noise. The tenants went out and arrived back at 12:30 a.m. and made lots of noise. Then the witness heard smashing on her bedroom window and saw the tenant who said he was locked out and wanted the witness to let him in. The witness denied entry and later heard the tenants upstairs but did not know how they got in. The witness later learned the tenants had broken a window. They continued to be noisy and someone called police. Lots of police cars showed up because the tenants were fighting, screaming and yelling. A police woman asked if the witness was okay, and the witness advised that she heard smashing and screaming.

This behaviour of smashing and breaking things continued, and the police took away one of the tenants. Police were there for hours and told the witness that the male tenant won't be returning and that there will be an order restraining him from having contact with the other tenant or from returning to the rental unit. His father told the witness that each of the tenants have restraining orders on each other.

However, since the male tenant has gone, the tenant remaining in the rental unit has strange people there with music blaring in the middle of the night, a chandelier has been broken, and there's still screaming, yelling, crying and throwing things in the rental unit. The witness is afraid and won't allow her grandchildren to visit. All neighbours have asked the witness if she's safe and have offered the witness to stay at their homes if needed, and they are also afraid. The witness is afraid when at the rental unit, and afraid that her belongings will be damaged if she leaves.

### Analysis

The *Residential Tenancy Act* states:

**56** (1) A landlord may make an application for dispute resolution to request an order

(a) 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

(b) granting the landlord an order of possession in respect of the rental unit.

(2) 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.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

I have reviewed the evidentiary material of the landlord, and considering the letters of neighbours and the testimony of the landlord's witness, I am satisfied that 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 and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and has put the landlord's property at significant risk. The disturbances have continued since the very first day of the tenancy and no rent has even been paid.

In the circumstances, I find that it would be unreasonable and unfair to the landlord and the other occupants of the residential property to wait for a notice to end the tenancy for cause to take effect. I find that the landlord is entitled to an Order of Possession effective on 2 days notice to the tenants without the necessity of serving a notice to end the tenancy.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in that amount.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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 24, 2018

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Residential Tenancy Branch