



# 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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56 of the *Act*; and
- authorization to recover the landlord's filing fee for this application from the tenant pursuant to section 72 of the *Act*.

### Preliminary Issues – Tenants' Late Joining and Early Exit from the Hearing

The hearing was scheduled to start at 10:30 a.m. and at that time, the landlords H.D. and C.D. attended the hearing. I explained the hearing process and received the landlords' testimony confirming that they served the Notice of Dispute Resolution to the tenants on April 12, 2018.

The tenants N.H. and R.M. did not join the hearing until 10:56 a.m. I explained to the tenants that they were exceptionally late in joining the hearing and that I would not restart the hearing. The tenant N.H. was immediately upset and expressed his opinion that the hearing would not be a fair process.

He stated that he wanted to "get on with it" but I advised that I need to first have the tenants provide an affirmation to tell the truth at the hearing, just as I had already done with the landlords at the beginning of the hearing. After completing the tenants' affirmations, I attempted to explain the hearing process to the tenants and that each party would have an opportunity to be heard, but since the hearing is conducted via a teleconference it is important to be respectful and not talk while another person is talking as the information will be cut-off.

The tenant N.H. continued to interrupt as I tried to explain the process, so I advised him that I was going to place the call into lecture mode (which mutes the lines of the other parties so the arbitrator can speak uninterrupted) in order to explain the hearing process to him so that we could move forward with parties providing evidence. The tenants N.H. and R.M. then exited the conference, however the landlords remained on the line and the hearing continued.

As the tenants eventually attended the hearing, and also uploaded documentary evidence to the dispute website for the hearing, I find that the tenants were served with the Notice of Dispute Resolution Proceeding package in accordance with section 89 of the *Act*.

The landlords confirmed that they had received the documentary evidence submitted by the tenants as the tenants had left it in their mailbox the morning of the hearing. Documentary evidence from the tenant, consisting of two letters, copies of rent cheques dated March 31, 2018 and April 28, 2018 and an affidavit of the tenants' version of events were uploaded to the Residential Tenancy Branch dispute website in two parts on April 27, 2018 and April 30, 2018.

The tenants did not provide their evidence in accordance with Residential Tenancy Branch (RTB) Rules of Procedure, Rule 3.15 which requires that the respondent serve their evidence to the applicant and the Residential Tenancy Branch "not less than seven days before the hearing". Where late evidence is submitted, I must apply Rule 3.17 of the RTB Rules of Procedure. Rule 3.17 sets out that the arbitrator has the discretion to accept late evidence where it does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

In this case, I find that the tenants' late service of the evidence packages to be prejudicial to the landlords. While the landlords acknowledged that they found the evidence in their mailbox the morning of the hearing, I do not find that it was delivered with sufficient time to allow the landlords the opportunity to review it. On this basis, I find that there is undue prejudice to admitting the tenants' written evidence and exclude it from this hearing.

#### Issue(s) to be Decided

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

### Background and Evidence

The landlords explained that there was no written tenancy agreement, only a verbal agreement with the tenants. The tenants N.H. and R. M. reside together in one of the four rooms that are rented out under separate tenancies in the basement of the landlords' house. All of the tenants share a common living room, kitchen and bathroom. The landlords live in the upstairs level of the house.

The tenancy began on February 3, 2018. Rent is \$800.00 per month due on the last day of the month. There was no security deposit collected from the tenants at the start of the tenancy. The tenants pay their rent in cash and the landlords stated that they have not provided receipts. The landlords stated that tenants paid rent on March 31, 2018 as required by the tenancy agreement, but as of the day of the hearing, the tenants had not provided the rent payment that was due on April 30, 2018.

The landlord provided sworn testimony that they personally served the tenants with individual Notice of Dispute Resolution Proceeding packages on April 12, 2018, in the presence of police. The landlords stated that they called police to attend while they served the documents to the tenants out of concern for their safety. The landlords provided a police file number in relation to the police attendance at their home for this purpose.

The landlords' application for the early end to tenancy specifies two police-involved events, March 19, 2018 and April 9, 2018, that precipitated the application. The landlords did not upload any documentary evidence in support of their application.

Landlord C.D. gave the following sworn testimony regarding the March 19, 2018 event:

- Landlord C.D. went downstairs to the rental unit shared living space and spoke with an occupant who rents one of the other rooms in the basement (herein referred to as "Occupant R") regarding a broom. Occupant R stated that he had not seen the broom.
- He alleges that Tenant N.H. inserted himself into the conversation and asked if he was being accused of taking the broom. At the time, Tenant N.H. was holding a knife. Landlord C.D. further alleges that Tenant N.H. then challenged him to a fight while holding the knife. Landlord C.D. states that he ran upstairs and told his wife (Landlord H.D.) to call the police.
- Tenant N.H. came outside, no longer holding the knife, and was yelling towards the landlords' upstairs living area, calling them "cowards".

- Police arrived, spoke with Tenant N.H. to “calm him down” and then went upstairs to speak with the landlords. The police told the landlords to call if Tenant N.H. “acts up” again.

The landlords were unable to provide a police file number for this incident. The landlords confirmed that Tenant N.H. was not taken into custody nor were charges laid in this matter.

In regards to the incident on April 9, 2018, the landlords testified that they witnessed Tenant N.H. chasing around, in an attempt to assault, a Community Health Nurse who was visiting Tenant R.M. (Tenant N.H.’s wife). The landlords were watching from inside their home. When Tenant N.H. saw them through the window, he started yelling at them and calling them “cowards”. The landlords called the police. The police attended but Tenant N.H. was not arrested or charged. The landlords provided a police file number related to this incident.

The landlords stated that the police provided them with a One Month Notice to End Tenancy for Cause to serve on the tenants in order to end the tenancy. The landlords stated that they served this notice on the tenants that day, April 9, 2018. The status of this application is unclear as the landlords acknowledged that they are not familiar with the residential tenancy legislation and seemed uncertain as to what steps to take next. I informed the landlords that if they require assistance regarding the residential tenancy legislation, policies and rules, they could contact the Residential Tenancy Branch to speak with an Information Officer or visit the Branch’s website.

In closing, the landlords added that there were other concerns that they had with the tenants. They referenced four occasions where Tenant N.H. had fallen asleep with either the stove or the oven turned on unattended, to the point that it was starting to create smoke. They also stated that the tenants have been told on a number of occasions of the need to separate the organic from non-organic waste as required by municipal bylaws.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord’s notice for cause. In order to

end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *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 interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property,*

**and**

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

As outlined above, there are clearly two separate components to section 56 of the *Act*, both of which need to be met in order for the landlords to obtain an early end to a tenancy. The second component requires that the landlords demonstrate that it would be unreasonable or unfair to wait for consideration of a standard One Month Notice to End Tenancy for Cause to be considered.

In this case, the landlords indicated that they have issued to the tenants a One Month Notice to End Tenancy for Cause on April 9, 2018, although the landlords seemed uncertain as to how to proceed further with this notice. The landlords acknowledged their limited understanding of the residential tenancy legislation and processes.

However, the Information Officers at the Residential Tenancy Branch are accessible by telephone and email, and also available for in-person consultation at the office located in Burnaby, to provide assistance to both landlords and tenants regarding the process to be followed when a tenancy agreement is in dispute and the appropriate remedies available under the *Act*.

In any event, the only matter before me at this hearing was the landlords' application for an early end to tenancy, resting primarily on the two police-involved incidents of March 19, 2018 and April 9, 2018.

The Landlord C.D. gave sworn testimony that on March 19, 2018, Tenant N.H. challenged him to a fight while holding a knife. While the landlords have presented very serious allegations, the landlords failed to provide a witness statement from Occupant R or call on him to provide witness testimony at the hearing. Given there are other occupants residing in the basement rental unit, the landlords never mention any issues or concerns with Tenant N.H.'s behaviour affecting or disrupting anyone else on the rental premises. The landlords confirmed that the police did not arrest Tenant N.H. regarding the March 19, 2018 incident.

With respect to the second incident of April 9, 2018, the landlords assert that Tenant N.H. was chasing around a Community Health Nurse in an attempt to assault the nurse. The landlords' testimony places them inside their home, witnessing the event through the window and involved in the incident only as the reporting party.

The landlords' health or safety was not in any jeopardy, although understandably it would have been disturbing for them to have watched the incident out of concern for the safety of the nurse. The landlords spoke with the police who attended at the incident, but again Tenant N.H. was not arrested as a result of his actions on April 9, 2018.

As the landlords are the applicants in this matter, they bear the burden, on a balance of probabilities, to prove that the high standard of criteria required under section 56 of the *Act* has been met. This means not only proving that there are grounds for ending the tenancy for cause, but that it would be unfair or unreasonable to the landlords to wait for a One Month Notice to End Tenancy to take effect.

While the landlords have made very serious allegations, the landlords failed to provide corroborating evidence or witness testimony in support of their allegations. If the tenants' behaviour met the significant and serious threshold of the criteria set out in section 56 provided above, it is reasonable to expect that the landlords could have provided corroborating witness testimony from the other occupants in the rental premises or nearby neighbours. Further to this, the landlords confirmed that the police did not arrest Tenant N.H. when they attended on March 19, 2018 and April 9, 2018.

The landlords have not submitted any police reports into evidence and were unable to provide a police file number for the March 19, 2018 incident in which they stated they

called police. In order to end this tenancy early without the issuance of a One Month Notice for Cause, I find that the landlords would require more corroborating evidence than relying solely on their testimony, that Landlord C.D. was threatened with a knife.

In addition to the police-involved incidents of March 19, 2018 and April 9, 2018, the landlords also referenced significant concerns regarding the potential for a fire due to Tenant N.H. falling asleep and leaving the stove and/or oven on and unattended, despite repeated warnings. Section 47 of the *Act* allows landlords to seek an end to a tenancy for cause for these types of ongoing actions and behaviours by providing a One Month Notice for Cause to the tenant. Section 56 of the *Act* is reserved for situations where a tenant's actions have escalated to the extent that the delay involved in issuing a One Month Notice for Cause and waiting for that Notice to take effect would be unreasonable or unfair.

In this case, I am satisfied that there *may* be cause to end this tenancy pursuant to section 47 of the *Act*; however, I am not satisfied that the landlords have sufficiently met the burden of proving that it would be unreasonable or unfair to wait for a One Month Notice to End Tenancy to take effect, as is required in order to end a tenancy early pursuant to section 56 of the *Act*.

### Conclusion

I dismiss the landlord's application for an early end to tenancy and recovery of the application fee. This tenancy continues until ended in accordance with the *Act*.

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: May 8, 2018

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Residential Tenancy Branch