



# 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 for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") seeking an order to end the tenancy early and to receive an order of possession under section 56 of the *Act*, and to recover the cost of the filing fee.

The landlords and the tenants attended the teleconference hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the rules of procedure and makes submissions to me. I have described only the evidence that is relevant to this decision below.

The tenants confirmed that they were served with the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenants confirmed that they did not submit documentary evidence until four days before the hearing. The parties were advised that the tenants' documentary evidence was being excluded in full as no documentary evidence was available for my consideration from the tenants in time for the hearing. The Rules of Procedure ("rules") clearly indicate that the deadline for respondents to serve evidence is seven days prior to the hearing.

### Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

### Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession pursuant to section 56 of the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 1, 2017. Monthly rent of \$1,450.00 is due on the first day of each month.

The landlords have applied for an order of possession to end the tenancy early and without having to wait for a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 56 of the *Act*. The landlord confirmed that they served the tenants with a 1 Month Notice that has an effective vacancy date of June 30, 2018. The landlord confirmed they have not filed an application for an order of possession based on the 1 Month Notice and have decided instead to wait for the results of this hearing.

The landlords write in their application the following as the reason why the application is being submitted:

"We hand delivered Tenants 1 Month Notice to End Tenancy on 29th May 2018 as per attached due to significant interfering with landlord, seriously jeopardizing our health and safety, and putting us on a significant risk. They have reverted to threatening us, removing and physically destroying the sign "for Rent" on our lawn (reported to police and police told us to contact your office). On 2nd April, Fire alarm was triggered when children were in the unit). Defamation in Face Book. Just Risky."

[Reproduced as written]

The landlords confirmed that they did not have any witnesses to present or witness statements for the hearing for my consideration. The landlords testified that the tenants have made unreasonable noise that has caused the male landlord's clients to leave his home office, that the tenants have removed a "For Rent" sign from the yard, and that the tenants have damaged the landlords' car and have thrown rocks on their patio. The landlords confirmed that while they did not witness any car damage or thrown rocks on

their patio, that they did have a witness but failed to submit a witness statement or have the witness present during the hearing. The tenants denied damaging the landlords' car or that they have thrown any rocks as alleged by the landlords.

The landlords confirmed that the tenants have not threatened the landlords personally and that the threats were related to the tenants "not cleaning". The landlords alleged also that the tenants tipped over garbage cans which the tenants also denied.

While the landlords provided a police file number during the hearing, the landlords confirmed that they did not have a police officer's name to present as a witness and that a police officer did not attend the rental unit regarding their concerns. In addition, the landlords confirmed that a police report was not served in evidence for my consideration as those events happened recently.

During the hearing, the parties were advised that section 56 of the *Act* involves a higher burden of proof than a 1 Month Notice and that the landlords' allegations submitted before me do not meet the burden of proof and as a result, I did not require further submissions from the tenants during the hearing which I will address further below.

### Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the *Act* applies and 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.**

[My emphasis added]

The burden of proof is on the landlords to prove that it would be unreasonable, or unfair to the landlords or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. The 1 Month Notice effective vacancy date is June 30, 2018 which has already passed.

I find that none of the allegations presented by the landlords would meet the burden of proof to end the tenancy earlier than a 1 Month Notice and that even if the allegations are true, which I am not making a determination regarding, that the landlords have failed to present sufficient evidence that it would be unreasonable to wait until June 30, 2018 which was the effective date of the 1 Month Notice.

Based on the above, I find that the landlords have provided insufficient evidence to support that the tenancy should end early under section 56 of the Act. At the very least, I would expect the landlords to have supplied a witness statement in evidence or had a

witness present during the hearing to give affirmed testimony. The landlords did neither. Therefore, I dismiss the landlords' application due to insufficient evidence.

The tenancy shall continue until ended in accordance with the *Act*.

As the landlords' application was not successful, I do not grant the recovery of the cost of the filing fee.

The landlords are at liberty to apply for an order of possession related to the 1 Month Notice which was discussed during the hearing.

### Conclusion

The landlords' application is dismissed without leave to reapply due to insufficient evidence.

The tenancy shall continue until ended in accordance with the *Act*.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 6, 2018

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Residential Tenancy Branch