



# 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 an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an order ending the tenancy early and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the agent for the Landlord (G.C.), and legal counsel for the Landlord, as well as the Tenant and legal counsel for the Tenant. All parties provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. All parties were in agreement that the Application, the Notice of Hearing and the documentary evidence before me was served in accordance with the *Act* and the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”).

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the two year fixed term tenancy commenced on March 1, 2018, and that rent in the amount of \$4,100.00 is due on the first day of each month. The parties also agreed in the hearing that the Tenant has the Landlord's permission to run a short-stay accommodation business out of the rental property.

The Landlord stated that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, put the Landlord's property at significant risk, and caused extraordinary damage to the rental unit.

The Landlord and the witness G.C. alleged that the Tenant has threatened other occupants of the residence and exhibited physical aggression. G.C., who acts as an agent for the Landlord, testified that she received numerous complaints and phone calls from other occupants of the rental unit that the Tenant had uttered threats or been physically violent towards them. G.C. spoke about one incident in particular where she stated she received a complaint from another occupant that the Tenant had threatened to cut their head off with an axe, which was located nearby, and had physically pushed them. Although the Landlord provided several text messages as evidence of the above noted complaints; only one mentioned anything about safety concerns regarding the Tenant. Although this text message stated that the author feared for their safety and had called the police on the Tenant, the text did not contain any details about why the occupant felt threatened or unsafe due to the Tenants actions. Further to this, although G.C. stated that she was advised by another occupant that the Tenant had uttered threats against her, that occupant did not provide any evidence or testimony to corroborate this statement and G.C. acknowledged that she has neither experienced nor witnessed the Tenant uttering threats or acting violently.

The Landlord submitted a video purporting to show violent and angry behavior from the Tenant towards the Landlord; however, no testimony was provided in the hearing regarding this video. Further to this G.C., the Landlord and legal counsel for the Landlord all stated that the police had been called to the property numerous times to deal with the Tenant; however, they stated that copies of the police reports could not be released to them for this hearing for privacy reasons. The Landlord and G.C. also alleged that the Tenant might be suffering from a mental health condition impacting his own safety and the safety of others.

While the Tenant acknowledged that the police had attended the property on numerous occasions, he stated he was unsure why they had been called on those occasions and that the police had in fact ordered the Landlord to stop trespassing on the property without proper notice on one of these occasions. The Tenant testified that the allegations made by the Landlord and G.C. are categorically untrue and denied ever threatening or acting aggressively or violently towards other occupants, G.C. or the Landlord, and provided numerous positive online reviews about him and the short-stay accommodations he runs out of the rental property. The Tenant also submitted a text message from a short-stay guest complaining about how the Landlord had entered the property and scared him by making allegations about the Tenant. The Tenant's legal counsel stated that the Tenant suffers from cognitive conditions which affect his understanding of social interactions and lead him to be blunt and factual when speaking with others. She argued that this lack of social understanding might be misinterpreted as rude by the Landlord or others but is in no way aggressive or threatening. Further to this, she stated that the allegations made by the Landlord and C.G. about the Tenant's mental health are false, unsubstantiated, and discriminatory.

The Landlord and the G.C. stated that the Tenant has caused damage to the property by affixing structures to the roof, and that some of these structures, as well as objects hanging from the trees such as a large buoy and large pulleys with hooks, pose a risk to the property as well as safety concerns for other occupants. They also alleged that the Tenant has a bed on the roof under tarps and sometimes sleeps on the roof and in a treehouse on the property, which pose serious risks to his safety, the safety of other occupants, the property itself, as well as the Landlord in terms of liability.

The Tenant denied that there is a bed on the roof or that he sleeps either on the roof or in a treehouse on the property. The Tenant stated that the tarps and the structures leading to the roof are there for the purpose of roof maintenance and to keep out water from several holes in the roof and denied that they have caused extraordinary or other damage to the property. While the Landlord disputed that the tarping and structures to the roof are for the purpose of repairs as they have not been notified of the need of any such repairs, the Tenant's legal counsel argued that the Tenant is not required to notify the Landlord of all repairs as the tenancy agreement specifically states that the Tenant will be updating, renovating, and repairing the property at his own expense and that the Tenant is responsible for general maintenance and care of the property. Further to this the Tenant testified that at the start of the tenancy he alerted the Landlord any time he was making a repair or completing a renovation and was specifically instructed not to do so.

## Analysis

Section 56 of the Act states the following with regards to a landlord's application seeking an order ending a tenancy early:

### **Application for order ending tenancy early**

**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.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that in order to end this tenancy early pursuant to section 56 of the *Act*, the Landlord must satisfy me, on a balance of probabilities, not only that the Tenant meets one of the grounds set out in subsection 2, but that it would also 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.

The Landlord and the witness G.C. alleged that the Tenant has threatened other occupants of the residence and exhibited physical aggression; however, only G.C., who acts as an agent for the Landlord, provided testimony regarding these alleged threats and acts of physical violence. Although she testified that she received numerous complaints of threats and acts of physical violence by the Tenant from other occupants of the rental unit, none of the occupants she stated made complaints attended the hearing to provide testimony or submitted written statements confirming these threats and acts of physical violence from the Tenant. The Landlord provided two text messages from persons he stated were occupants of the rental unit, only one of which mentioned anything about safety; however, this text message did not contain any details about why the occupant felt threatened or unsafe due to the Tenants actions. Further to this, although G.C. stated that she was advised by another occupant that the Tenant had uttered threats against her, that occupant did not provide any evidence or testimony to corroborate this statement and G.C. acknowledged that she has neither experienced nor witnessed the Tenant uttering threats or acting violently.

The Landlord also submitted a video purporting to show violent and angry behavior from the Tenant towards the Landlord; however, in viewing this video I note that it simply shows the Landlord making several requests to speak to the Tenant and the Tenant's refusal to speak with the Landlord at that time. In my opinion, the video contains no evidence of violent, threatening or aggressive behavior on the part of the Tenant.

The Tenant testified that the allegations made by Landlord and G.C. are categorically untrue, he denied ever threatening or acting aggressively or violently towards other

occupants, G.C. or the Landlord, and provided copies of numerous online positive reviews about him and the short-stay accommodations he runs on the property.

Based on the above, I find that the Landlord has failed to satisfy me that 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. Having made this finding, I will now turn my mind to whether the Tenant has put the Landlord's property at significant risk or caused extraordinary damage to the residential property.

Although the Landlord and G.C. stated that the Tenant has a bed and other objects on the roof and appears to be sleeping both on the roof and in a tree house on the property, which is a serious safety concern. The Tenant denied these allegations and I find that the photographic and video evidence submitted by the Landlord fails to establish that this is the case. The Landlord and G.C. stated that the Tenant has also damaged the property by affixing structures to the roof and from the roof to the ground and nearby trees; however, the Tenant stated that the structures referred to are for the purpose of accessing the roof for maintenance and to secure tarps to prevent the ingress of water due to roof damage. Further to this, he stated it has in no way caused damage to the property. Although the Landlord and G.C. stated that the Tenant has not advised them of any roof damage and is simply using the tarps to hid the bed, the Tenant again denied that there is a bed on the roof and his legal counsel pointed to the tenancy agreement which clearly states that the Tenant is authorized and required to complete repairs and renovations to the property. As a result, both the Tenant and his legal counsel argued that he is not obligated to notify the Landlord of the repairs.

Despite the Landlords insistence that the Tenant has damaged the property and the fact that several wooden structures can be seen leading to and from the roof, I find that the Landlord has failed to provide any documentary or other evidence to demonstrate that these structures have cause extraordinary damage to the property.

Further to this, the Landlord stated that the ramp from the roof to the ground and the series of hooks and pulleys in the trees pose a serious safety risk as well as a risk to the property. The Tenant denied that this is the case as they are all well secured and stated that until the Application was filed by the Landlord, he was unaware that the Landlord had concerns about either the ramp he uses to access the roof for maintenance or the hanging objects in the trees. The Tenant stated that he previously removed an item from the property at the Landlord's request due to safety concerns and that he would be happy to remove the ramp and the objects in the trees if they are an issue.

Although I appreciate the Landlord's concerns, I do not see a fundamental difference between the Tenant accessing areas of the property to complete repairs using a ladder or the ramp and to me it is clear from the tenancy agreement that the Tenant is entitled to complete repairs and renovations on the property. While I agree that the objects hanging in the trees may, under certain circumstances, pose some level of risk to occupants, I find that this risk is minimal and I disagree that they pose a significant risk to either the property or its occupants. Further to this, the Tenant has offered to remove the ramp as well as the objects hanging in the trees at the Landlord's request. As a result of the above, I find that the Landlord has therefore failed to satisfy me, that the Tenant has put the Landlord's property at significant risk or that the above noted objects pose a serious health or safety risk to the Landlord or the occupants of the property.

As stated above, the Landlord bears the onus in this matter and ultimately I have found above that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenant meets at least one of the grounds listed under section 56(2) of the *Act* for ending the tenancy. Further to this, based on the documentary evidence and testimony before me for consideration, I am not satisfied that 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 a result, I therefore dismiss the Landlord's Application seeking an order ending the tenancy early without leave to reapply. I order that the tenancy therefore continue in full force and effect until it is ended in accordance with the *Act*.

As the Landlord was unsuccessful in their Application, I find that they must bear the cost of their own filing fee.

### Conclusion

The Landlord's Application is dismissed without leave to reapply. I order that the tenancy therefore continue in full force and effect until it is 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: October 10, 2018

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Residential Tenancy Branch