



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for an Order of Possession to end the tenancy early.

The Landlord was present for the duration of the teleconference hearing, while the Tenant did not call in during the approximately 15 minutes that the phone line remained open.

The Landlord provided affirmed testimony that the Notice of Dispute Resolution Proceeding package and a copy of their evidence was sent to the Tenant by registered mail. The registered mail tracking number was submitted into evidence and the Canada Post website shows the package as unclaimed by the Tenant.

The tracking number is included on the front page of this decision. Despite not claiming the mail, I find that the Tenant was duly served with the Notice of Dispute Resolution Proceeding information in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue to be Decided

Should the Landlord be granted an Order of Possession to end the tenancy early, pursuant to Section 56 of the *Act*?

### Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on May 1, 2018 and a security deposit of \$525.00 was paid at the outset of the tenancy. Monthly rent is \$1,050.00 due on the first day of each month. The tenancy agreement submitted into evidence confirms the tenancy details as described by the Landlord.

The Landlord testified that she noticed some changes with the Tenant at the end of July 2018 when the Tenant asked the Landlord for a new fob and did not respond to the Landlord after multiple attempts to contact her through various means. The Landlord mailed the fob to the Tenant.

After returning from being away in early August 2018, the Landlord had many messages from property management regarding issues brought forth concerning the Tenant.

The Landlord stated that the property managers noted that the Tenant was shouting obscenities, threatening other tenants, changing clothes on the patio and at one point was brandishing a knife.

The Landlord described multiple complaints from other tenants and property management regarding the seemingly erratic behaviour of the Tenant. The Landlord submitted into evidence a written timeline of events that occurred between August 1 and August 20, 2018.

The Landlord also submitted two videos into evidence of a walk-through of the rental unit, with the Landlord describing food and other belongings found throughout the unit. Along with concern for the safety and right to quiet enjoyment of the other tenants, the Landlord also noted concern for the safety of the property as the Tenant has been leaving the patio door unlocked and windows/blinds open. As this is a ground floor unit, the Landlord is worried about the risk for break-ins and theft.

The Landlord provided testimony that the police had been called due to mental health concerns for the Tenant and the Tenant was away from the rental unit for a period of time. The Landlord testified that the Tenant is now back at the rental unit and that the concerns regarding the Tenant's behaviour remain.

The Landlord has not served the Tenant with any notices to end tenancy and instead is seeking an order to end the tenancy early due to the concern for the safety and well-being of the other building residents, and safety and security of the building.

### Analysis

Section 56 of the *Act* allows for an Order of Possession to be issued to end the tenancy earlier than a One Month Notice to End Tenancy for Cause (a "One Month Notice") would allow for. The Landlord must prove that any of the following situations apply:

- (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.

As an order under Section 56 is reserved for urgent situations, there is a high burden of proof on the Landlord to demonstrate that the tenant is causing issues that are significant, and that pose an immediate risk to the Landlord, other occupants, and/or the rental property. The burden of proof is also high for the Landlord to prove that it would

be unfair or unreasonable to wait for a One Month Notice to take effect and that the tenancy should be ended immediately.

Although the Landlord's testimony was undisputed due to the absence of the Tenant, the onus remains on the Landlord to prove the urgent and immediate nature of the concerns regarding the actions of the Tenant.

However, I find that the Landlord provided insufficient evidence to establish the serious and urgent nature of the concerns or that this is a matter that could not wait for a One Month Notice and instead must be dealt with urgently.

I accept the testimony of the Landlord that some incidents have occurred that have been concerning for other residents, and that pose a concern for the security of the property. However, without sufficient evidence, I do not find that the Landlord met the high burden of proof for an early end to the tenancy. Therefore, I decline to issue an order to end the tenancy early.

### Conclusion

The Landlord's application for an order to end the tenancy early is 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: September 25, 2018

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Residential Tenancy Branch