



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking to end a tenancy early and without notice.

The hearing was conducted via teleconference and was attended by the landlord and his agent.

The landlord's agent testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on October 20, 2018 in accordance with Section 89. The landlord's agent also testified that their additional evidence was served to the tenant personally on October 24, 2018

Based on the testimony of the landlord's agent, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

At the outset of the hearing I reviewed the Application for Dispute Resolution with the landlord and his agent. I clarified that they had not applied for an order of possession based on the One Month Notice to End Tenancy for Cause but rather they had applied for an early end to the tenancy without a notice to end tenancy.

I further explained that as a result, I would not consider the validity of the One Month Notice to End Tenancy issued by the landlord. Rather I would consider only if the landlord had sufficient evidence to establish the tenancy should end in accordance with the legislated requirements for ending a tenancy for an emergency need that would warrant ending the tenancy that would not require a One Month Notice to take effect.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to end the tenancy early and without notice and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 56, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties by February 5, 2018 for a month to month tenancy beginning on February 1, 2018 for a monthly rent of \$500.00, with a security deposit of \$250.00 paid;
- A copy of a One Month Notice to End Tenancy for Cause issued by the landlord on September 29, 2018 with an effective vacancy date of September 29, 2018 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or legal right of another occupant or the landlord; put the landlord's property at significant risk and the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; or jeopardize a lawful right or interest of another occupant or the landlord; and
- A copy of a Proof of Service Notice to End Tenancy form that states the landlord served the One Month Notice to End Tenancy on the tenant by posting it to the rental unit door on September 19, 2018 at 2:00 p.m. The document also records that this service was witnessed by a third party on September 29, 2018.

At the hearing the landlord clarified the One Month Notice was served on September 29, 2018 and the reference to September 19, 2018 was an administrative error.

The landlord and his agent provided testimony of a number events where the tenant has been verbally abusive to both of them as well as other occupants in the residential property; that the tenant removes lightbulbs in the corridors of the residential property; that he writes obscene and vulgar graffiti on corridor walls; and has caused damage to the residential property. The agent referred to their photographic and documentary evidence. The documentary evidence included statements provided by other occupants and the owner of a lounge on the main floor of the residential property.

The landlord's agent submitted that most recently she has involved the police in her interactions with the tenant and that currently the police are considering laying charges against the tenant for his actions. However, the agent did not know specifically what charges were being considered.

The landlord testified that tenant had approached him in a threatening manner near the outside garbage bins but was unclear of what the threatening manner was. Both the landlord and his agent indicated that they are fearful of interacting with or being around the tenant. They are also fearful for the safety of the 21 other occupants in the residential property.

### Analysis

Section 56(1) of the *Act* states 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.

Section 56(2) states I 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; or
  - (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.

While Section 56 allows for ending a tenancy in this manner I note that the reasons for ending the tenancy are very similar to the reasons allowed for under Section 47 which requires that a landlord to issue a One Month Notice. However, if the landlord wants to end the tenancy under Section 56 they are required to provide evidence to also establish that it would be unreasonable to wait for a One Month Notice to take effect.

As a result, ending a tenancy under Section 56 is reserved for the most serious of cases where the tenant has committed such egregious acts that other occupants and/or the landlord are at significant risk or danger should the tenant continue to reside in the residential property.

From the testimony of the landlord I am satisfied that landlord has established that they have cause to end the tenancy as outlined both in Sections 47 and 56. However, I find the landlord has failed to establish that the other occupants of the property; the landlord; his property or agent are at a significant risk or in imminent danger if the tenant were to

wait until a One Month Notice to take effect. As such, I find the landlord is not entitled to an order of possession to end the tenancy under Section 56.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety. I note however, the landlord remains at liberty to file for an order of possession based on the undisputed One Month Notice to End Tenancy for Cause issued on September 29, 2018.

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: November 16, 2018

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Residential Tenancy Branch