



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on January 30, 2019 wherein the Landlord sought an early end to tenancy and recovery of the filing fee.

The hearing was scheduled for teleconference at 9:30 a.m. on March 4, 2019.

Only the Landlord called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:48 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that they personally served the Tenant with the Notice of Hearing and the Application on February 1, 2019. I accept the Landlord's undisputed testimony in this regard and I find the Tenant was duly served as of February 1, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's

submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy pursuant to section 56 of the *Residential Tenancy Act*?
2. Should the Landlord recover the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord stated that the tenancy began approximately five or six years ago. They stated that the Tenant has regularly been late paying rent.

The Landlord stated that they have dealt with “threatening accusations over a period of time”. The Landlord said when they recently served a 10 Day Notice to End Tenancy the Tenant was very upset and made the following allegations:

*“You have been through my stuff”;  
“I know you ganged up with somebody”;  
“Someone drugged me at my work”; and,  
“Now everyone is against me”.*

The Landlord testified that they got scared due to the fact the Tenant has imagined things which have not occurred.

The Landlord confirmed that they served the 10 Day Notice on the Tenant on January 17, 2019. The Tenant did not apply to dispute the Notice. The Notice was provided in evidence by the Landlord as was a proof of service. The Landlord did not provide any other evidence in support of their claim.

### Analysis

Ending a tenancy is a significant request. A tenancy may be ended provided that it is done in accordance with the *Residential Tenancy Act*.

In this case, the Landlord alleges there is urgency to ending this tenancy, and seeks to end the tenancy early pursuant to section 56 of the *Act*. This section provides that a tenancy may be ended early if the Landlord provides sufficient evidence that the Tenant has:

1. *significantly* interfered with the Landlord or another occupant of the residential property;
2. *seriously* jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
3. put the Landlord's property at *significant* risk;
4. engaged in illegal activity that
  - a. has damaged or is likely to damage the Landlord's property,
  - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
  - c. has jeopardized a lawful right of another occupant or the Landlord; or
5. caused *extraordinary* damage to the residential property

*and* it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect.

[emphasis added in italics]

This is a two part test and the Landlord must prove *both* parts.

In this case, the Landlord alleged the Tenant had mental health issues and made comments which were concerning and not based on real events. The Landlord testified that these comments made the Landlord fearful of the Tenant.

The Landlord did not allege the Tenant was engaged in illegal activity or damaged the residential tenancy. Thus, the only sections which would relate to this claim are those listed in #1-3 above.

The use of the words "significant interference" and "seriously jeopardized" or "significant risk" in the legislation must be given their plain meaning. These indicate the standard of proof required when a Landlord seeks an *early* end to tenancy. While it is possible that persons suffering from mental health issues may behave in ways, or say things which

are unsettling or not based on reality, this is does not in and of itself, meet the test set out in section 56(1). The Landlord must prove that the Tenant *significantly* interfered with the Landlord or another occupant of the residential property, or *seriously* jeopardized the health or safety or lawful right or interest of the Landlord or another occupant, or put the Landlord's property at *significant* risk. I find that the evidence before me fails to meet this burden.

In this case, the Landlord bears the burden of proof and I find that the Landlord has not provided sufficient evidence to establish adequate cause to end the tenancy under section 56. I also find the Landlord has failed to prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect. Consequently, the Landlord's application is dismissed.

As the Landlord's application was unsuccessful, they are not entitled to recovery of the filing fee for the cost of his application.

### Conclusion

The Landlord's application is dismissed, with the effect that the 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: March 04, 2019

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Residential Tenancy Branch