



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This decision pertains to the landlord's application for dispute resolution made on March 12, 2019, under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following relief, pursuant to sections 56 and 72(1) of the Act:

1. an order 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 ("order for early termination of tenancy");
2. an order of possession in respect of the rental unit; and,
3. compensation for the cost of the filing fee in the amount of \$100.00.

The landlord, two witnesses for the landlord, the tenant, the tenant's advocate, and a witness for the tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

No issues of service were raised by the parties and I confirmed that both parties served the other side in accordance with the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Issues

1. Is the landlord entitled to orders under section 47 of the Act?
2. Is the landlord entitled to compensation under section 72 of the Act?

### Background and Evidence

W.R. (a witness for the landlord who acted as the primary agent or advocate during the hearing, and to whom I shall simply refer to as the “landlord” for brevity) testified that the tenancy began in December 2014. Monthly rent is \$925.00, which increases to \$948.13 on May 1, 2019. The tenant paid a security deposit of \$450.00. The tenancy agreement is oral, and no documentary evidence relating to the tenancy agreement was submitted.

The landlord’s primary reason for seeking an early end of tenancy is that there are lots of boxes and various items in the rental unit that the landlord argues poses a health and safety risk. The paramount concern is that, if there were to be a spark of some nature, the boxes would go up in flames and result in burning the property down.

In addition, the numerous boxes and property in the rental unit poses a potential to damage the floor underneath. The property also poses a risk of attracting rodents and bugs. In addition, there is an odor which comes up through the vents to the upper floor of the house. (The rental unit is a basement suite.). During rebuttal, the landlord further stated that while they can’t prove it, they believe that the tenant brought silverfish into the rental unit when she brought the boxes in.

The landlord (and others) are losing sleep, are anxious and stressed, and they have suffered health and mental issues because of the condition of the rental unit. “It’s scaring us,” explained the landlord. Near the end of the landlord’s testimony, he explained that he has been trained by a fire department and is “very, very familiar with safety and health regulations.” In his final submission the landlord testified that they “live in extreme fear if a spark [occurred] that the place will go up in flames.”

There have been three inspections, the first done on January 16, 2019. The tenant was given a 40-day notice to clean up the rental unit. The tenant apparently agreed to do so, but on a second inspection of February 28, little had been done. Then, a third inspection occurred on April 9, and the rental unit was “still in utter chaos.”

The landlord issued a One Month Notice to End Tenancy for Cause on February 28, 2019, for which there is a separate arbitration hearing on April 26, 2019. The tenant filed for dispute resolution against that notice on March 7, 2019, and I note that the present application before me was filed by the landlord on March 12, 2019.

Not surprisingly, since the one-month notice was issued the relationship between the parties has “become severely toxic.”

Finally, the landlord explained that the tenant had stored a lot of items outside the house and was asked to move it all into the rental unit in November 2018. In support of the landlord’s application many photographs of the rental unit were submitted into evidence.

The tenant’s advocate submitted that an order under section 56 is a very high bar to meet, and that it is an extraordinary remedy in cases where there is a “clear and present danger” that would necessitate the early termination of a tenancy. And, where it would be unreasonable and unfair to wait under section 47 for the tenancy to be ended.

The advocate explained that the situation of all the property and boxes in the rental unit was brought about by the landlord’s direction to the tenant to bring all the items inside. The advocate, the tenant, and the tenant’s witness all made submissions and provided testimony about the tenant’s efforts to get rid of stuff and clean up the rental unit. It is not, the advocate opined, a hoarding situation. (Indeed, I note that photographs of the bathroom reflect a rather neat and tidy tenant.) However, the tenant has had issues with lifting and carrying things, which has made the clean up process rather difficult.

The tenant’s witness (who has visited the rental unit on seven or eight occasions to assist the tenant with the items) testified that he has “never smelled anything” bad, and instead has smelled lavender or some sort of air freshener. There is, he noted, “nothing dead or dying.”

Regarding the fire hazard, the advocate argued that there are no fire department or municipal inspection reports that would have established such a hazard. There is no specific evidence of any hazard for that matter, she said.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56 (1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

In this case, while the tenant undoubtedly has a large quantity of personal property in the rental unit, it does not follow that owning a lot of stuff seriously jeopardizes the health and safety of the landlord or another occupant. Nor is having a lot of stuff necessarily going to put the landlord's property at significant risk.

While the quantity of boxes and other items in the rental unit may attract insects (such as silverfish, which enjoy starch and paper), there is no evidence that rodents or insects have been attracted to the boxes. And, the presence of silverfish in and of itself does not give rise to a significant risk to property or health or safety.

The landlord's fear of a spark accidentally lighting the boxes and the place going up in flames is, with respect, unreasonable. Where would such a spark originate? The landlord and the witnesses never explained this or provided any evidence of the risk of a spark. Nor was there any evidence, such as a report by a fire department, to establish that there is a serious jeopardizing or a serious risk from the collection of items in the rental unit.

Regarding the smell, the landlord and the landlord's witnesses did not describe what the smell was, but there is in any event insufficient evidence to show how the smells have seriously jeopardized the health or safety of the landlord and others.

Second, the landlord did not provide a reasonable explanation as to why it would be 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. The landlord already issued a one month notice on February 28, and then rather coincidentally filed this application for an early end to tenancy only five days after the tenant filed her dispute on March 7. The third inspection did not occur until April 9, 2019.

Given the sequence of events as described by the parties, I find that the landlord simply wanted to end the tenancy early and did not want to wait until the hearing scheduled for April 26, 2019.

The state of the rental unit on February 28, 2019 is what lead the landlord to issue the one-month notice. But, there is no evidence that the condition of the rental unit changed, or became more serious between February 28 and March 12, the latter date being when the landlord filed this application. As such, I am not inclined to find that the state of the rental unit gave rise to a reasonable circumstance where an early end of tenancy might be brought. There is, I find, no evidence that the tenant has done any of the actions listed within section 56(1)(a) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for an order under section 56 of the Act. As such, I dismiss this aspect of the landlord's application without leave to reapply.

I dismiss the landlord's application for compensation under section 72 of the Act.

Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy will continue 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 Act.

Dated: April 12, 2019

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Residential Tenancy Branch