



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALDRIDGE CUSTON HOMES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession, for an early end to the tenancy and to recover the filing fee.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the “hearing package”) by posting it on the door of the Tenants’ rental unit on May 23, 2019. The Landlord supported the service of the documents with an affidavit dated May 24, 2019 stating the Notice of Hearing and Hearing Package was posted to the Tenants door. The Tenants said they did not receive the Landlord’s hearing package as stated by the Landlord until June 15, 2019. I accept the Landlord’s testimony with respect to service of the hearing package. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties represented.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy early?

### Background and Evidence

This tenancy started on July 3, 2017 as a fixed term tenancy with an expiry date of October 1, 2017 and then continued to this date. The landlord said the tenancy continued as a month to month verbal agreement and the Tenants said a new fixed term agreement was signed but the tenancy is now month to month. Rent is \$850.00 and \$100.00 for utilities per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 was paid at the start of the tenancy.

The Landlord said the Tenants have complained about the state of repairs of the rental unit and the Tenant's have said the unit is uninhabitable. Further the Landlord said he sent a roofing company to the rental unit to repair the roof and the Tenants refused the roofing company access to the roof so the repairs were not completed. The Landlord said based on the Tenants' testimony and evidence the unit should not be occupied. Consequently the Landlord said he has applied for an Early End to Tenancy. The Landlord requested an Order of Possession.

The Tenants said the rental unit is in disrepair, but they have made some repairs to the unit and the rental unit is now habitable and safe. The Tenants said they want to continue the tenancy. The Tenants said there are no emergency repairs that need to be done to the unit at this time. Further the Tenants said there are general repairs that are needed including the work in the furnace, the roof and some electrical issues, but these repairs can be done over time. The Tenants said they want to continue to live in the unit and the rental unit is habitable and safe.

The Landlord said he was not sure if he should make this application under the Early End to Tenancy or to issue a new Notice to End Tenancy for repairs. The Landlord said he does not want to be responsible for any problems with the rental unit so that is why he applied under an Early End to Tenancy and not a New Notice to End Tenancy.

The Tenants said they will give access to the Landlord or repair companies if the Landlord gives them a 24 hour Notice to enter the rental unit as required by the Act.

The Landlord said it is difficult for him to give exact time on an Entry Notice because he lives out of town, but he understands that exact times are required under the Act.

The Tenants said in closing they want to continue the tenancy and they believe the rental unit is habitable and safe.

The Landlord said in closing he wants to end the tenancy because he does not want to be responsible for any damage in the rental unit. The Landlord is concerned that the Tenants have complained about the unit and now are saying the unit is habitable and safe. The Landlord said he understands that he can issue a 2 Month Notice to End Tenancy for repairs.

## Analysis

Section 56 of the Act says:

(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.**

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

In this situation the Landlord has not proven a significant and serious threat exists to the Tenants or the rental unit if the tenancy continues. For a Section 56 application to be successful it must be unreasonable for the Landlord to wait for a Notice under section 47 or 49 to be served on the Tenants. I accept that the rental unit may be in need of repairs and I also accept the Tenants testimony that the rental unit is habitable and safe. Consequently I dismiss the Landlord's application under section 56 of the Act as no immediate significant and serious threat to the condition of the rental unit has been proven. The Landlord is at leave to issue a 2 Month Notice to End Tenancy for repairs or renovations to the rental unit.

The Landlord's application does not meet the requirements of an Early End to Tenancy under section 56 of the Act. I dismiss the Landlord's application.

As the Landlord has been unsuccessful in this matter I order the Landlord to bear the \$100.00 filing fee for this application which they have already paid.

### Conclusion

The Landlord's application for an early end to tenancy is dismissed without leave to reapply.

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: July 02, 2019

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Residential Tenancy Branch