



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession made under section 56 of the Act. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explained the purpose of the hearing to the parties, which is to determine whether the circumstances warrant an urgent end to the tenancy due to immediate and severe risk to the property or other occupants or the landlord. I explained the hearing process to the parties and permitted the parties to ask questions about the process. The parties were affirmed.

I confirmed that the landlord duly served the tenant with his proceeding package. The tenant testified that he had also submitted evidence to the Residential Tenancy Branch but acknowledged that he did not serve it upon the landlord. I noted that the record before me does not include any submissions from the tenant; however, even if there was documentary evidence submitted by the tenant it would not have been admissible since it was not served upon the landlord. I informed the tenant that he may provide his evidence orally during the hearing.

### Issue(s) to be Decided

Has the landlord established that the tenancy should end early and obtain an Order of Possession as provided under section 56 of the Act?

### Background and Evidence

The tenancy started in October or November 2016 and the landlord collected a security deposit of \$575.00. The parties provided opposing statements as to whether there was an oral or written tenancy agreement. The rent was initially set at \$1,150.00 per month but was increased to \$1,350.00 starting January 2019. The rent is payable on the 15<sup>th</sup> day of the month.

In filing this application, the landlord wrote:

Tenant has set up a camera on our property and is claiming someone has tampered with his vehicle. He claims air has been let out of the tires and the car doors have been scratched and that deisel has been poured into his gas tank. We feel that he poses a threat to us as we have young children who play outside and if someone is tampering with his vehicles it is not safe for us. One minute he's claiming that we have tampered with his vehicle, then says he's getting the police involved.

During the hearing, I asked the landlord to describe the reasons he made this application. The landlord responded as follows: the parties entered into a Mutual Agreement to End Tenancy on March 29, 2019 with an effective date of May 30, 2019 and the waiver of rent payable for two months; however, the tenant has not moved out of the rental unit. The landlord testified that the tenant did not pay rent for June or July 2019 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on June 8, 2019 indicating \$1,350.00 was outstanding as of June 1, 2019.

I asked the landlord whether there were any other reasons for seeking an end to the tenancy and the landlord indicated there were only minor issues that involved parking and insurance on the tenant's vehicle.

I gave the tenant the opportunity to respond and he also focused on the landlord's submissions concerning the mutual agreement to end tenancy and the issue of rent.

It was obvious to me that the primary issue(s) under dispute was the validity of the mutual agreement to end tenancy and the issue of rent. As I informed the parties, the hearing was scheduled to hear allegations that the tenant poses an immediate and severe risk and I am tasked with making a decision on that matter and not the validity of a mutual agreement to end tenancy and matters pertaining to rent. I informed the

parties that I would not make a decision as to whether the tenancy is over or the landlord is entitled to an Order of Possession based on a mutual agreement to end tenancy or unpaid rent as I considered the landlord's actions to be an abuse of process and an attempt to jump the queue that is in place to deal with a mutual agreement to end tenancy and unpaid rent.

The landlord then asserted that I had not let him finish his presentation despite the fact that I had asked him whether there were any other reasons for filing this application and he indicated only minor issues concerning parking and insurance. The landlord further stated that this application was made under section 56 of the Act based on "advice" Information Officers had give.

I recognized that the landlord had included text messages in the documentary evidence provided with his application and I have read and considered the text messages in determining whether the landlord is entitled to an order of Possession under section 56 of the Act.

The text messages are purported from the tenant to the landlord. In the text messages the tenant indicates someone has been tampering with his vehicle by placing diesel fuel in the gas tank, damaging the ignition and flattening his tire. The tenant enquires as to whether the landlord has footage from his video surveillance. The tenant also implies that the tampering started around the same time as a dispute between the parties.

### Analysis

Section 58 of the Act permit a person to make an application to the Director to resolve a dispute and the Director must resolve the dispute. The application before me was made under section 56(2) of the Act which applies where a tenant poses an immediate and severe risk to the rental property, other occupants or the landlord and I am tasked with resolving that issue as a delegate of the Director.

In keeping with the principles of natural justice, a respondent has the right to be notified of the action being sought against them. This is accomplished by serving the respondent with the Application for Dispute Resolution and proceeding package. The Application for Dispute Resolution filed and served upon the tenant indicated the landlord was seeking an Order of Possession under section 56 of the Act. Accordingly, I declined to consider the dispute or make any findings as to a mutual agreement to end tenancy or unpaid rent and I have only considered whether the landlord has met his

burden to demonstrate the tenant poses an immediate and severe risk to the property, the occupants or the landlord under section 56.

Section 56 of the Act permits the Director, as delegated to an Arbitrator, to make an order to end the tenancy early, on a date that is earlier than the effective date on a 1 Month Notice to End Tenancy for Cause had one been issued. In order to grant an order to end the tenancy early under this provision 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.

[Reproduced as written with my emphasis added]

The landlord bears the burden to prove the tenant, or persons permitted on the property by the tenant, has acted in such a way as to warrant an order to end the tenancy earlier

than by way of a 1 Month Notice. The burden is high as this provision is intended to apply in the most urgent and severe circumstances.

Upon hearing from the parties, I am of the view the true nature of the dispute between the parties concerns a mutual agreement to end tenancy and rent. When given the opportunity to make oral submissions to me the landlord focused on the mutual agreement to end tenancy and unpaid rent and mentioned there were only other minor issues involving parking and insurance. However, to ensure I have not overlooked an urgent and severe situation I have considered the text messages presented as evidence by the landlord in determining whether the tenancy should be ended early under section 56 of the Act.

Upon reading the text messages, I find the content contained in the messages fall far short of the criteria for granting an application for an early end of tenancy and Order of Possession under section 56 of the Act.

In light of the above, I dismiss the landlord's application.

As the parties were informed during the hearing, there is a mechanism for seeking an Order of Possession based on a mutual agreement to end tenancy and unpaid rent. Those remedies remain available to the landlord.

### Conclusion

The landlord's application made under section 56 of the Act 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: July 12, 2019

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Residential Tenancy Branch