



# 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 convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 12, 2019 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord sought reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody appeared for the Tenants. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The city of the rental unit address was spelled wrong on the Application. I have corrected this on the front page of this decision.

The Landlord had submitted evidence prior to the hearing. The Tenants had not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that he served hearing packages and the evidence on Tenant M.L. in person July 18, 2019. He confirmed he served two separate packages addressed to each Tenant. The Landlord had submitted a Proof of Service confirming this. Tenant M.L. has signed the Proof of Service confirming receipt of the two packages. The Proof of Service is also signed by a witness.

Based on the undisputed testimony of the Landlord and Proof of Service submitted, I find the Tenants were served with the hearing packages and evidence in accordance with section 89(2) of the *Act*. I also find the Landlord complied with rule 10 of the Rules of Procedure (the “Rules”) in relation to service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence submitted and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Landlord be granted an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The Landlord submitted a written tenancy agreement. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started April 01, 2017 and is a month-to-month tenancy. Rent is \$800.00 per month due on the first day of each month.

The Landlord testified as follows in relation to the basis for the Application. The Tenants are fighting frequently. This causes a disturbance and threat to the Landlord and basement tenants adjacent to the rental unit. The basement tenants adjacent to the rental unit are scared. The police have been involved two or three times. The Tenants have damaged the rental unit.

The Landlord pointed to the evidence submitted which consists of two photos showing holes in the walls of the rental unit.

I asked the Landlord about the police involvement. The Landlord testified that the basement tenants adjacent to the rental unit called the police once approximately one month ago because the Tenants were fighting, and they were scared. He testified that he called the police once approximately two months ago because the Tenants were fighting.

I asked the Landlord what subsection of section 56 of the *Act* he says applies. The Landlord said he did not know.

The Landlord further testified as follows. The Tenants have allowed Tenant M.L.'s mother to live in the rental unit. Tenant M.L.'s mother smokes in the rental unit.

I asked the Landlord why this is an urgent situation that could not be dealt with by way of a One Month Notice under section 47 of the *Act*. The Landlord said he did issue the Tenants a One Month Notice last month with an effective date at the end of this month. The Landlord also said the Tenants failed to pay rent and were issued a 10 Day Notice. The Landlord submitted that this is an urgent situation because it is scary when people are fighting and you don't know if something can happen to you. He said the basement tenants adjacent to the rental unit are scared.

### Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenants, or a person allowed on the property by the tenants, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a 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 has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

Orders issued under section 56 of the *Act* are reserved for the most serious and urgent of situations. The Landlord said the Tenants have allowed Tenant M.L.'s mother to live in the rental unit, Tenant M.L.'s mother smokes in the rental unit and that the Tenants have failed to pay rent. None of these issues justify ending the tenancy early under section 56 of the *Act* as none of them are serious or urgent enough to meet the two-part test.

The Landlord testified that the Tenants are fighting frequently. However, the only evidence the Landlord submitted to support his position about this are two photos of holes in the walls of the rental unit. I acknowledge that these holes are beyond reasonable wear and tear. However, the Landlord has not submitted additional evidence to show that these were caused by the Tenants, such as a Condition Inspection Report showing the state of the rental unit when the Tenants moved in. Nor am I satisfied that these holes are so serious that it would be unfair to require the Landlord to address this issue through a One Month Notice.

The Landlord has not submitted any further evidence in support of his position. There is no evidence before me showing the police were called and attended the rental unit twice given the actions of the Tenants. More significantly, there is no evidence from the basement tenants adjacent to the rental unit such as witness statements. Nor did the Landlord call the basement tenants adjacent to the rental unit as witnesses on the hearing.

I also note the following. My understanding is that the Tenants are fighting between themselves, not with the Landlord or other tenants. I accept that this may cause a disturbance but do not accept that it necessarily poses a threat to the Landlord or neighboring tenants without further explanation or evidence on this point. There is no evidence before me supporting the Landlord's testimony about the frequency of the fighting. According to the Landlord the police have been called twice; however, this tenancy has been ongoing for more than two years.

In the circumstances, and mostly due to the lack of evidence to support the Landlord's position, I am not satisfied the two-part test set out in section 56 of the *Act* has been met. I am not satisfied the situation is urgent enough that the Landlord cannot deal with it through a One Month Notice. The Application is dismissed without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

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: July 30, 2019

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Residential Tenancy Branch