



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to this tenancy and an Order of Possession, pursuant to section 56;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord's three agents, landlord RS ("landlord"), "landlord NH" and "landlord SS" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he was the manager, landlord NH was the property manager, and landlord SS was the caretaker for the landlord company named in this application and that all three agents had permission to speak on its behalf at this hearing. "Witness SM," who is the landlord's building manager, appeared on behalf of the landlord to testify at this hearing, so he was excluded from the outset and recalled later by the landlord.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution and notice of hearing on July 19, 2019, by way of posting to her rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 22, 2019, three days after its posting.

The landlord testified that the tenant was served with the landlord's evidence package on July 7, 2019, by way of posting to her rental unit door. Witness SM confirmed this service. The landlord then stated that he posted the evidence on July 19, 2019, the same time as the landlord's application and notice of hearing. The landlord's two proofs of service, which are both incomplete, indicate that the notice of hearing and application

were posted on July 19, 2019, and the notice of eviction and fire department notices were posted on July 7, 2019. Nothing is mentioned about the landlord's photographs, which the landlord said was possibly posted on July 7, 2019 and there were only about 10 photographs.

Accordingly, I find that the tenant did not have notice that the landlord intended to rely on all of the above evidence for this hearing, because the evidence was served before the landlord filed this application on July 16, 2019 and obtained a notice of hearing on July 19, 2019. There are also 21 photographs, not 10 as claimed by the landlord, who was unsure about the evidence that he had submitted for this hearing. Therefore, I cannot consider the landlord's evidence in my decision.

### Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord testified regarding the following facts. This tenancy began more than one year ago, probably a few years ago. This is probably a month-to-month tenancy but the landlord was unsure. The landlord does not know the monthly rent due, nor does he know how much the security deposit was, if it was paid. The landlord does not know whether a written tenancy agreement was signed by both parties. The landlord claimed that the old building manager passed away and took all of the records with him. The tenant still resides in the rental unit.

The landlord testified that he strongly believed, in his opinion, as well as the opinion of the local city fire department, that the tenant has a hoarding problem. He stated that the tenant showed "little regard informally and formally." He said that the tenant, other tenants, and the building were in "grave danger." He claimed that the tenant's rental unit was "filled to the brim" with garbage having a "strong odour." He said that the rental unit was unkempt, it had not been cleaned for months or years, and the washroom was filled with debris and clothing.

Landlord SS testified that the fire department stated that the rental unit had garbage, was messy, stinking, in a bad state, and the tenant had to "make arrangements."

Witness SM testified that he saw the rental unit and it was messy, stinky, dirty, and dangerous to the tenant and other tenants. He said that the fire department gave a notice for the above.

### Analysis

While I have turned my mind to the testimony of the landlord's agents and witness SM, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, 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*
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

The landlord did not testify about which one of the above parts of section 56 of the *Act*, the landlord was applying under.

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

I find that the landlord failed to show the urgency of this situation. The landlord did not provide dates of when the above problems started, how long they continued for, when the landlord examined the rental unit, and whether the tenant made efforts to clean the unit. The landlord did not provide information as to when the fire department examined the rental unit, when the notices were given by the fire department and for what issue. The landlord did not indicate what type of eviction notice was given to the tenant and why the tenant was given such notice.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord's entire application 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: August 06, 2019

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Residential Tenancy Branch