



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

ET

### Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act. Only the landlord appeared for the hearing. There was no appearance on part of the tenants despite leaving the teleconference call open nearly 30 minutes.

Since there was no appearance on part of the tenants, I explored service of hearing documents upon the tenants. The landlord had submitted registered mail receipts, including tracking numbers, to prove the tenants were sent the hearing documents via registered mail on October 5, 2019. A search of the tracking numbers showed that Canada Post had left notice cards for the tenants to pick up the registered mail on two occasions: October 8, 2019 and October 19, 2019 and the registered mail has yet to be picked up. The landlord testified that she also sent a text message to the tenant to inform them that she had sent them registered mail.

The landlord testified that her co-landlord and husband confirmed today that the tenants are still occupying the rental unit.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail, so that a person cannot avoid service.

Pursuant to section 90 of the Act, I find the tenants are deemed to be served with notification of this proceeding and I continue to consider the landlord's application.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession under section 56 of the Act?

### Background and Evidence

The landlord testified that approximately 1.5 years ago the tenant gained possession of the rental unit under an agreement to renovate the rental unit in exchange for six months of free rent. The tenant continued to reside in the rental unit under a verbal tenancy agreement after the renovations were complete and then on September 1, 2019 the tenants and the landlords executed a written tenancy agreement.

The written tenancy agreement was provided as evidence and it reflects a tenancy that commenced on September 1, 2019 and the tenants are required to pay rent of \$1,000.00 on the 15<sup>th</sup> day of every month. The tenants are also required to pay for hydro. No security deposit was paid or collected.

The landlord testified that the tenants failed to pay rent that was due on September 15, 2019 and on September 22, 2019 the landlord sent the tenants a 10 Day Notice to End Tenancy for Unpaid Rent via registered mail. The landlord sent a text message to the tenants to advise them she was doing so but the registered mail was returned to her.

The tenant made promises to pay the rent by the upcoming Friday (September 27 ,2019) and then he said he would pay the rent on Sunday, September 29, 2019. The landlord informed the tenant that paying rent on September 29, 2019 was too late and they would have to move out by October 2, 2019. The tenant responded to the landlord, via text message, that he was going to start rip out the flooring and appliances that he had installed in the rental unit when he renovated it. The tenant claimed he had already started doing so and had pictures to prove it. The landlords proceeded to make this Application for Dispute Resolution and provided copies of the text messages exchanged on September 29, 2019 and October 1, 2019.

The landlord testified that between October 2 and 4, 2019 the tenant, or someone permitted by the tenant, moved a trailer onto the septic field of the rental unit. The landlord sent a text message to instruct the tenant to remove the trailer from the septic field immediately but there was no response from the tenant.

The landlord acknowledged that she or the other co-landlords have not inspected the rental unit since the tenant made threats to rip out the renovations, explaining that they are fearful of the people residing there. The landlord explained that there is another dwelling on the property and people were squatting in that other dwelling. There was an incident involving gunfire with the squatters and then the landlord discovered that after the squatters were removed the tenants had permitted one of the squatters to move into the rental unit. The landlord testified that the police have had a lot of involvement with the people occupying the rental unit and the landlord had a police file number to provide.

The landlord testified that the tenant offered \$2,000.00 for rent on October 11, 2019 but she declined to accept it since the landlords do not want to continue this tenancy.

The landlord withdrew their request for recovery of the filing fee paid for this application.

### Analysis

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. Section 56 provides:

(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]

In this case, based on the landlord's testimony, it appears that the tenancy may have been set to end on October 7, 2019 for unpaid rent (not October 2, 2019 as the landlord stated to the tenant since a Notice to End Tenancy mailed to a tenant is deemed to be received five days

after mailing); however, the landlord made this application on October 2, 2019 based on the tenants' threats to cause extraordinary damage to the rental unit among other things. The landlord provided a copy of the text messages the tenant sent to her, threatening to damage the property. Accordingly, I am satisfied that the application has been made due to the threats made by the tenant and is not an unpaid rent case.

Based on the unopposed evidence presented to me by the landlord, I find the tenant's threats to rip out flooring and appliances installed at the rental unit to be serious threats to cause extraordinary damage and I find it would be unreasonable to wait for a 1 Month Notice to take effect. Although the landlords were incorrect in informing the tenant September 29, 2019 was too late to pay the outstanding rent and they had to vacate by October 2, 2019 due to unpaid rent, I find that incorrect information does not justify threatening to cause extraordinary damage to the property. Therefore, I grant the landlord's request for an Order of Possession under section 56 of the Act.

Provided to the landlords with this decision is an Order of Possession effective two (2) days after service upon the tenants.

### Conclusion

The landlords are provided an Order of Possession to serve and enforce upon the tenants. The Order of Possession is effective two (2) days after service.

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: October 24, 2019

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Residential Tenancy Branch