



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

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

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

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The parties both testified that there were two other related residential tenancy branch hearings pending between the parties. The file numbers for other hearings are referenced on the first page of this decision.

The landlord testified that, in one of these related hearings, an order of possession was issued on November 29, 2019. However, the tenant testified that a review consideration was filed on December 2, 2019 challenging the November 29, 2019 order of possession. The Residential Tenancy Branch records indicate that the review consideration had not yet been adjudicated at the time of this hearing. Accordingly,

since the November 29, 2019 order of possession was still under review, I proceeded with the landlord's application herein for an early end of tenancy.

Issue(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession pursuant to section 56?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72

Background and Evidence

The landlord testified that the rental unit is attached to her residence. The landlord testified that on November 11, 2019, she smelled a very strong odor emanating from the rental unit. The landlord testified that she was so concerned that she summoned the police. The landlord testified that the police arrived and spoke with the tenant. The landlord testified that the tenant told the police officer that he was staining in the rental unit. The landlord testified that the police officer told the tenant to open the windows to ventilate the rental unit.

The landlord testified that the odor has persisted and became so bad that she was forced to move out of her residence for ten days for health reasons. The tenant testified that the police responded to the rental unit again on November 26, 2019 because there was an odor smelling like burnt plastic emanating from the rental unit.

The landlord also testified that the tenant has been very disruptive. The landlord testified that the tenant has been making loud noises late at night, harassing neighbours, and participating in illegal activities.

The tenant testified that the odor was the result of spraying clear coat on his bicycle just outside the rental unit. The tenant testified that the odor must have seeped into the rental unit because the door did not seal if it was not shut completely. The tenant testified that the odor quickly dissipated and there has been no odor from his rental unit since.

The tenant denied the landlord's allegations that he has been disruptive and harassing.

## Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

**it would be unreasonable, or unfair to the landlord, the tenant 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. (emphasis added)**

Orders for Possession issued under section 56 of the *Act* are reserved for the most dire or urgent of situations.

In this matter, the landlord's application for early tenancy related to the presence of a foul odor emanating from the rental unit. During the hearing, the landlord also provided

testimony that the tenant was creating loud noises, bothering neighbors, participating in illegal activities and harassing the landlord. However, *Residential Tenancy Branch Rule of Procedure* 2.2 states that a claim is limited to what is stated in the application. Since these accusations were not stated in the landlord's application, I will not consider any of the claims raised by the landlord, other than the claim relating to the foul odor.

Although the landlord did testify that the police attended the rental unit twice to respond to complaints of a foul odor, I do not find that the landlord provided sufficient evidence to establish that the existence of the foul odor was so extreme that it would be unreasonable or unfair to wait for a notice to end the tenancy for cause under section 47 of the *Act*. In light of this finding, I dismiss the landlord's application for an early end to the tenancy without leave to reapply.

As the landlord was not successful in her application, the tenant is not responsible for the landlord's filing fee and I dismiss the landlord's application to recover it.

### Conclusion

I dismiss the landlord's application.

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: December 04, 2019

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Residential Tenancy Branch