



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 03, 2020 (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 and Tenant appeared at the hearing. I explained the hearing process to parties. The parties provided affirmed testimony.

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

The Tenant confirmed receipt of the hearing package and a USB from the Landlord. The Tenant said he did not look at the USB because he was not sure what it was.

The Landlord testified that she spoke to the Tenant over the phone about the USB. The Tenant denied this.

Rule 3.10.5 of the Rules of Procedure states:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence...

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

Here, I am not satisfied the Tenant was unable to access the USB. The Tenant testified that he did not look at the USB because he was not sure what it was. However, the Tenant acknowledged receiving the hearing package and USB. It is reasonable to expect the Tenant to have concluded that the USB related to the hearing. The Tenant should have looked at the USB. I do not find this situation to be the equivalent of a party not being able to access electronic evidence because here the Tenant chose not to try and access the USB. I am not satisfied the evidence on the USB should be excluded in the circumstances. The USB evidence is admissible.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlord's evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?

### Background and Evidence

The parties agreed there is a written tenancy agreement between them. The parties agreed the Tenant rents a room from the Landlord; however, both confirmed the Landlord lives in a separate suite and that the parties do not share a bathroom or kitchen. The parties agreed the tenancy started February 03, 2020.

The Landlord testified as follows. The Tenant attacked, hit and injured her on March 02, 2020. The Tenant bruised her arm. Her elderly mother who is almost 85 called for help and the police attended. She lives in the upstairs suite with her elderly mother. Her elderly mother is scared of the Tenant and cannot sleep. She is scared of the Tenant. The Tenant shares the downstairs suite with another tenant who is nervous around the Tenant.

The Tenant denied he attacked, hit or injured the Landlord on March 02, 2020.

The Tenant testified as follows. The Landlord started banging on the door to the suite at 6:00 a.m. on March 02, 2020. The Landlord opened the door and came into the suite. The Landlord then opened the door to his room and started attacking him. The Landlord tried to grab his cell phone. The Landlord hit him, bit him and tried to rip his shirt. The Landlord told her mother to block the door so the Tenant could not leave.

The Landlord threw his belongings out of his room. The Landlord grabbed his camera and threw it on the ground. He called police and they attended.

The Tenant testified that he and the other tenant have worked out their differences and are civil.

The Landlord submitted photos and a video of an injured hand. The Landlord submitted video of an altercation between her and the Tenant.

### Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early where two conditions are met. First, the tenant, or a person allowed on the property by the tenant, 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...

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. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I am satisfied based on the video that the parties got into an altercation on March 02, 2020. I am also satisfied based on the video that the altercation was both verbal and physical. I am satisfied based on the video it was a mutual altercation in the sense that both parties engaged in the altercation and neither appear to have taken adequate steps to diffuse the situation. I am satisfied police had to attend because of the altercation as both parties agreed on this. I am satisfied based on the photo and video that the Landlord was injured to some degree as a result of the altercation.

I am satisfied based on the video of the altercation, and the fact that police had to attend, that the Tenant has significantly interfered with or unreasonably disturbed the Landlord or seriously jeopardized the health or safety of the Landlord. I am satisfied it

would be unfair or unreasonable to require the Landlord to wait for a One Month Notice to End Tenancy for Cause to take effect given the verbal and physical altercation that resulted in police attendance.

I am satisfied this tenancy should end pursuant to section 56 of the *Act*. I issue the Landlord an Order of Possession for the rental unit which will be effective two days after service on the Tenant.

### Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: March 20, 2020

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Residential Tenancy Branch