



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

ET and FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to end the tenancy early, for an Order of Possession, and to recover the fee for filing this Application for Dispute Resolution.

The male Agent for the Landlord stated that on April 06, 2020 the Dispute Resolution Package was posted on the Tenant's door. The Tenant acknowledged receipt of these documents.

In April of 2020 the Landlord submitted evidence to the Residential Tenancy Branch on various dates. The male Agent for the Landlord stated that the different packages of evidence were posted on the Tenant's door on various dates in April of 2020 and on one occasion was personally served to the Tenant. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 21, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was served to the Landlord, via email, on April 21, 2020. Service by email is allowed at this time due to the current pandemic. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early; to an Order of Possession on the basis that the tenancy is ending early, pursuant to section 56(1) of the *Residential Tenancy Act (Act)*; and to recover the filing fee pursuant to section 72(1) of the *Act*?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- This tenancy began in 2014;
- A One Month Notice to End Tenancy for Cause was posted on the Tenant's door on February 26, 2020;
- The One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by March 31, 2020; and
- The One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the Tenant or a person permitted on the property has put the Landlord's property at significant risk.

In the Application for Dispute Resolution the Landlord declared that the Landlord wishes to end the tenancy early, in part, because the "City has given us a 10-day order to repair drywall in the suite and the tenant has both refused access and is also not practising social distancing which puts our staff at risk if we enter".

In support of the application to end the tenancy early in regard to the drywall repair the male Agent for the Landlord stated that:

- On March 25, 2020 the Landlord received a letter from the City that required them to replace drywall in the unit within 10 days;
- The Landlord had previously removed drywall that had been damaged by water in early February of 2020;
- The Tenant was not responsible for the damage;
- The letter from the City declared that the Landlord was subject to penalties if the drywall was not replaced by April 04, 2020;
- The drywall needed to be replaced missing drywall poses a fire hazard;
- On March 27, 2020 a notice was posted on the Tenant's door, in which the Tenant was advised the Landlord would be entering the unit to replace the drywall on March 29, 2020, March 30, 2020, and March 31, 2020;
- On March 29, 2020 two people went to the rental unit for the purposes of replacing the drywall and the Tenant would not permit them to enter, as she wanted the people completing the repairs to be "licensed";

- On March 30, 2020 two people went to the rental unit for the purposes of replacing the drywall and the Tenant would not permit them to enter, as she wanted the people completing the repairs to be “licensed”;
- On March 31, 2020 he went to the rental unit with people who were planning on replacing the drywall;
- When he arrived at the unit on March 31, 2020 the Tenant had two guests in the unit;
- He asked the Tenant to ask her guests to leave while the drywall was being replaced;
- The Tenant refused to ask her guests to leave;
- He did not want his staff to replace the drywall with that many people in the small bachelor suite, due to the current pandemic and the need for social distancing;
- He opted not to replace the drywall on March 31, 2020 due to concerns for social distancing;
- The drywall repairs were completed on April 02, 2020;
- The delay in repairing the drywall placed the Landlord and the people occupying the rental unit at risk;
- The people occupying the rental unit are no longer at risk as a result of the drywall not being repaired, given that the drywall has been replaced.

The female Agent for the Landlord stated that:

- It was the Tenant who contacted the City to inform them that the drywall had not been replaced after being damaged by water;
- The Tenant had interfered previous attempts to complete the drywall repairs;
- This Application for Dispute Resolution was filed prior to the drywall repairs being completed; and
- Although the application to end the tenancy early was based, in part, on the Tenant’s failure to allow the drywall repairs to be made in a timely manner, it is also based on the Tenant’s history of damaging the Landlord’s property.

The Tenant stated that:

- She received a written notice that declared the Landlord would be entering the rental unit for the purpose of replacing the drywall;
- She was unable to locate that notice at the time of the hearing, so she is not certain of the proposed dates of entry;
- On February 06, 2020 two people came to the rental unit for the purposes of replacing the drywall and she would not permit them to enter, as she did not think they were “ticketed”;
- On February 07, 2020 two people came to the rental unit for the purposes of replacing the drywall and she would not permit them to enter, as she did not think they were “ticketed”;
- On a date which may have been March 31, 2020 the male Agent for the Landlord came to her rental unit while she had two guests;

- The male Agent for the Landlord asked her to ask her guests to leave while the drywall was being replaced;
- She refused to ask her guests to leave as she wanted them to be “witnesses”;
- The Landlord refused to replace the drywall on that date because of the guests in her unit;
- It is possible that the Landlord attempted to replace the damaged drywall on March 29, 2020 and March 30, 2020, as the Landlord contends, rather than on February 06, 2020 and February 07, 2020, as she originally testified;
- The drywall has now been repaired; and
- She does not dispute the Landlord’s submission that it was repaired on April 02, 2020.

The Advocate for the Tenant stated that:

- There is a hearing scheduled for April 30, 2020 to consider the merits of the One Month Notice to End Tenancy for Cause that was served to the Tenant on February 26, 2020.

The Landlord appears to wish to end this tenancy early, in part, because the Tenant is not practising self distancing.

The male Agent for the Landlord stated that:

- The Tenant regularly has two guests in her rental unit, which is a small bachelor suite;
- Those two guests also live in the residential complex;
- The Landlord is not attempting to end the tenancy of the two guests who visit in the rental unit; and
- The Landlord’s employees are placed at risk if they enter the rental unit as a result of the Tenant’s failure to practise self distancing.

The female Agent for the Landlord stated that:

- Many seniors live in this residential complex; and
- The Tenant’s failure to practise safe distancing puts seniors living in this residential complex at significant risk.

The Tenant stated that:

- She understands the need to maintain social distancing of 6 feet;
- On occasion she has two guests, both of whom live in the residential complex;
- More commonly only her boyfriend visits; and
- When her boyfriend or the other guest visit they maintain social distancing within the rental unit.

The Advocate for the Tenant submits that there is no law that prevents the Tenant from having guests in her rental unit.

### Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and he may apply for an Order of Possession for the rental unit. Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

Even if I accepted that the Tenant's failure to allow the Landlord to replace the drywall in her rental unit in a timely manner was grounds to end this tenancy pursuant to section 47 of the *Act*, I would not find it was grounds to end this tenancy pursuant to section 56

of the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the drywall was repaired on April 02, 2020. Given that the drywall has been repaired, I find that the drywall repairs, or lack thereof, no longer places the occupants of the residential complex or the Landlord's property at risk.

As the occupants of the residential complex or the Landlord's property are no longer at risk as a result of the need for drywall repairs, I find that there is no urgent need to end this tenancy as a result of that issue. Even if the Tenant's failure to allow these repairs in a timely manner constitutes grounds to end this tenancy, pursuant to section 47 of the *Act*, I cannot conclude that 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 to take effect. I therefore dismiss the Landlord's application to end the tenancy early as a result of the delayed drywall repairs.

In concluding that it would not 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 to take effect, I was heavily influenced by the undisputed evidence that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on February 26, 2020 and that the merits of that notice will be the subject of a dispute resolution proceeding on April 30, 2020. The Landlord will have the opportunity at that hearing to establish there are sufficient grounds to end this tenancy in accordance with section 47 of the *Act*.

On the basis of the undisputed evidence I find that the Tenant delayed repairs to drywall by refusing to ask her guests to leave the rental unit when the Landlord wanted to make those repairs on March 31, 2020. I find it was reasonable and prudent for the Landlord to delay the repairs, given the size of the rental unit and the need for social distancing during this current COVID-19 pandemic.

Section 29(1)(b) of the *Act* stipulates that a landlord must not enter a rental unit unless at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice of their intent to enter.

On March 30, 2020 Ministerial Order M089 was signed, which temporarily amends the *Act*. Section 8(2) of that that Ministerial Order reads:

If a landlord gave written notice under section 29 (1) (b) of the *Residential Tenancy Act* before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.

Section 8(3) of that that Ministerial Order reads:

Despite any section of the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:

- (a) an emergency in relation to the COVID-19 pandemic exists, and
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

Section 8(3) of Ministerial Order M089 authorizes a landlord to enter a rental unit only if an emergency in relation to the COVID-19 pandemic exists and the entry is necessary to protect the health, safety or welfare of others. Although the need to repair the drywall may have been necessary to protect others from the risk of fire, it is not an emergency that relates to the COVID-19 pandemic. I therefore find that the Landlord did not have the right to enter the rental unit to repair the drywall on March 31, 2020 in spite of the written notice to enter the rental unit that was given to the Tenant.

Given that the Landlord has no current right or need to enter the rental unit, I find that there is no immediate risk to the Landlord's employees even if the Tenant is not practising proper social distancing.

Even if I accepted that the Tenant was not practising proper social distancing during the current pandemic, I would not end this tenancy early on those grounds. It is my understanding that the intent of Ministerial Order M089 is, in part, to limit the number of people being evicted during the pandemic. I find, therefore, that it is counterintuitive to end a tenancy in circumstances such as these where the Tenant is allowing two guests into a small rental unit. I find it particularly unreasonable to end the tenancy early, pursuant to section 56 of the *Act*, for that reason and I decline to do so.

I find that the Landlord has failed to establish the merit of this Application for Dispute Resolution and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord's application to end the tenancy early is dismissed, without leave to reapply.

Dated: April 28, 2020