



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenant.

All parties appeared for the hearing and provided testimony. The Tenant acknowledges receiving the Landlord's Notice of Hearing and application package. The Tenant also acknowledges receiving the Landlord's evidence package. The Tenant did not submit any documentary evidence for this proceeding, and stated she provided her evidence as part of a future hearing regarding the 1-Month Notice that was issued but did not provide it for this hearing. Since the Tenant failed to provide copies of this evidence for this hearing, to either the RTB, or the Landlord (applicant) in accordance with the Rules of Procedure, it is not admissible for today's proceeding. The Tenant did not sufficiently explain whether or not the evidence was new and relevant, or that it was not available many weeks ago, leading up to the evidence submission deadlines. The Tenant relied on oral testimony only.

The Tenant confirmed that the other Tenant on the tenancy agreement is her ex-partner, who no longer lives in the rental unit, due to a marital dissolution. The Tenant stated that her partner is legally barred from entering the rental unit, and has been for months. As such, I find M.V. is the only Tenant who is required to be served with the Notice of Hearing, as she is the only Tenant currently living there who has a tenancy agreement with the Landlord.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make oral submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure.

However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to end the tenancy early and obtain an Order of Possession?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that the tenancy began several years ago and that there were insignificant issues up until recently.

The Landlords explained that in January 2020, they received a call from the Tenant, saying that there were issues with the shower. The Landlords stated they attended the rental unit shortly thereafter, around January 11, 2020, and found that the tiles in the shower were separating/cracking and were leaking into the wall. The Landlords explained that the grout lines were failing, and water was penetrating in behind the tiles, which caused them to become loose. The Landlords stated that the house is 10 years old, and they are surprised the tiles are failing in this manner.

The Landlords stated that when they attended the rental unit in early January, they told the Tenant that she would need to move out and end the tenancy because of the extensive wall damage. The Landlords explained that this is the only bathroom in the rental unit, and they would not know how much remediation would be required until they opened up the wall, which is why they wanted to just end the tenancy. The Landlords stated that they issued a 1-Month Notice to End Tenancy for Cause in order to get the Tenant out so they could fix the shower.

The Tenant stated that prior to calling the Landlords, she had installed a plastic sheet over the wall in order to prevent water from further penetrating the wall. The Tenant stated that she only recently noticed this issue with the leaking shower tiles, and says it is not as bad of an issue as the Landlords are alleging. The Tenant stated that the issue

was mainly the failing tile grout, and she is not responsible for this, based on normal wear and tear. The Tenant denies doing anything abnormal to damage the tile and stated that the Landlords actually caused more damage to the shower when they came to investigate the issue and put up the temporary fix.

The Landlord stated that they put up a piece of plywood against the shower wall as a temporary fix, to prevent the tile from decaying further. The Landlord stated they then issued a 1-Month Notice so that they could properly fix the shower and they told the Tenant not to use the shower anymore. However, the Tenant kept using the shower.

The Tenant stated that the tile failing is a superficial repair that does not warrant an end to the tenancy, especially an early end to the tenancy.

### Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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 have carefully considered the evidence of both parties and I make the following findings in this dispute. It is clear based on the testimony from both parties that the relationship between the Tenant and the Landlords has degraded significantly. The consistent evidence is that there is an issue with the tiles surrounding the shower, and there has been water leaking inside the wall and behind the tiles. The tiles are starting

to fail, and fall off, and the grout is failing. It is clear there are issues with the shower that require remediation, and repair. The extent of the damage, and decay is unclear, as the wall has not been sufficiently exposed or opened up.

I note this is the only washroom in the rental unit, so remediating the tile leak has been challenging. The challenges have been exacerbated by the relationship dysfunction between the Landlords and the Tenant, and now by the issues surrounding the pandemic. I acknowledge that repairing a shower in a rental unit where there is only one bathroom is challenging. However, it appears most of this issue is the result of failing building materials in the tub surround. The Landlord has not provided any evidence to show the failing tile grout, and leaking tiles was a result of the Tenant's negligence.

I note the Tenant has put up a plastic barrier to help prevent further leaks, and mitigate the leak, until the wall can be fixed properly. The Landlords have also installed a piece of plywood to prevent more tiles from dislodging. Although none of this is a long term fix, I accept that each party has attempted to mitigate the issue to some degree.

In any event, I don't find the issue regarding the leaking shower and the failing tile/grout is severe enough such that it is unreasonable or unfair for the landlord to wait for a 1-Month notice to end tenancy to take effect. Further, it is not sufficiently clear that the Tenant is responsible for the leak and the failing tile installation in the first place.

I do not find the Landlords have provided sufficient evidence to substantiate that there is cause to end the tenancy in an expedited manner. As a result, I am unable to end this tenancy early.

Given the Landlords were not successful in this hearing, I decline to award them the recovery of the cost of the filing fee they paid to make this application.

### Conclusion

The Landlords have not met the burden to prove the tenancy should end early. Therefore, the Landlords' Application is dismissed without leave to re-apply and the tenancy will continue until such time it is ended in accordance with the Act.

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: April 06, 2020