



# 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 April 15, 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 appeared at the hearing with his son to assist. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant provided the correct spelling of his first name which is reflected in the style of cause.

The Landlord advised that he wanted to call a witness at the hearing. However, the witness was not available during the hearing and therefore I did not hear from the witness.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

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

### Issue 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

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2019 and is for a fixed term ending April 30, 2020.

The Landlord had provided written submissions prior to the hearing. These outlined the reasons the Landlord wants to end this tenancy including:

- Furniture left in the front yard at the rental unit address
- Garbage left in the back yard at the rental unit address
- Cigarette butts left in the back yard and neighbour's yard which the Landlord submits is a fire hazard and has resulted in complaints from the neighbour
- The Tenant's son smoking in the rental unit
- The Tenant's son going up on the roof of the rental unit
- Garbage around the rental unit attracting rats
- Garbage left at the back of the rental unit
- Broken items or repair issues with the stove, fridge, washer, dryer, toilets, towel hanger, ceiling fan, sinks and showers
- Damage to wood around the garage door
- The Tenant allowing others to live at the rental unit
- The Tenant and his sister assaulting the Landlord

The Landlord's son spoke for the Landlord during the hearing. The Landlord's son confirmed that the above list covers the reasons the Landlord wants to end this tenancy.

Given both parties had provided written materials prior to the hearing, and given the issues raised, I asked the Landlord's son to focus on how the issues raised meet the two-part test set out in section 56 of the *Act*.

In relation to the Tenant's son going up on the roof of the rental unit, the Landlord's son testified that this shows the character of the Tenant's son. He submitted that it shows the Tenant's son does not care about his own health and therefore does not care about the rental unit.

When questioned about this further, the Landlord's son submitted that the Tenant's son could have damaged the roof by walking on it. The Landlord's son was not able to point to evidence showing the Tenant's son had damaged the roof. The Landlord's son

submitted that the Landlord could not attend the rental unit so could not obtain evidence of this.

In relation to the broken items and repair issues, the Landlord's son said the Landlord did not complete a Condition Inspection Report at the start of the tenancy. I asked the Landlord's son to point to evidence showing the items mentioned were working at the start of the tenancy. The Landlord's son submitted that some of the items were purchased new for the Tenant during the tenancy and the Tenant broke them. The Landlord's son acknowledged that this only applies to the fridge and not other items mentioned.

In relation to the broken items and repair issues, the Landlord's son made the following further submissions. The Tenant is careless in relation to the rental unit. The Tenant shows no intent to remedy issues that arise. The Landlord has had to use his own money to pay for issues. The Tenant does not take responsibility for his actions.

The Landlord's son referred to a letter from the city and commented that the Tenant refuses to act on the issues raised.

The Landlord's son made the following further submissions. The Tenant is routinely destroying the property. The situation is urgent because the letter from the city shows the city has given the Landlord ultimatums stating items have to be removed from the property or the Landlord will be prosecuted. It would be unreasonable not to remove the Tenant now because the Tenant shows time and again that he refuses to do anything, and the Landlord has to fix the problems that arise. The Landlord does not have time to fix the problems. It is unreasonable for the Landlord to wait to end this tenancy because the Tenant does not care about the Landlord's livelihood. It is urgent and unfair to require the Landlord to wait to end this tenancy because the Landlord does not want to be prosecuted by the city. The Tenant has been harassing the Landlord about repairs and the Landlord cannot go to the rental unit because of the current pandemic. The garbage issue attracts rats which is a health hazard to the other tenants at the rental unit address.

In relation to the cigarette butts and smoking issue, the Landlord's son testified as follows. These are fire hazards. There are dry items in the back yard that could catch on fire. The rental unit, or the neighbour's house, could catch on fire. Further, the neighbour has been complaining about cigarette butts in their yard.

In relation to the Tenant allowing others to live at the rental unit, the Landlord's son testified as follows. There has been a spike in the hydro bill due to this. The Landlord cannot afford to pay the increased prices. Things in the rental unit are being damaged because there are an excessive number of people in the rental unit.

The Landlord's son testified that the Tenant assaulted the Landlord. In the written materials, it states that the Tenant and his sister assaulted the Landlord.

The Landlord's son submitted that the Tenant admitted at a prior hearing that he was cursing at the Landlord and being aggressive. The Landlord's son said this was not noted in a previous decision.

The Landlord's son submitted that the Tenant admitted in his own materials that he was cursing at the Landlord and being aggressive. The Landlord's son could not point to where in the materials the Tenant admitted this.

The Landlord was going to call I.F. as a witness to the assault; however, the witness was not available.

The Landlord's son pointed to a signed statement from I.F. I reviewed this during the hearing. It does not state anything about an assault.

The Landlord's son then acknowledged that the only evidence about the assault is the Landlord's written submissions stating it occurred.

The Tenant testified as follows.

He did not assault the Landlord. Nobody on the property assaulted the Landlord. Nobody swore at the Landlord.

In relation to the broken items and repair issues, these were issues from the start of the tenancy. He did not break the items mentioned.

It is not true that he has allowed others to live in the rental unit. He has allowed guests to stay at the rental unit, but these people did not live at the rental unit.

His son does smoke. His son does not smoke in the rental unit. He has told his son to use an ash tray. The cigarette butts in the yard are from the other tenants living at the

rental unit address, not from his son. It is possible that his son has thrown one of the cigarette butts.

There is no damage to the wood around the garage door and, if there is some slight damage, the Landlord can deduct the cost of repairing this from the security deposit. This is not an urgent matter.

The garbage in the yard or around the rental unit is not from the Tenant, it is from the other tenants that live at the rental unit address. I understood the Tenant to acknowledge that he left a mattress in the yard of the rental unit.

At the end of the hearing, I asked the Landlord's son what the Landlord was seeking as an effective date of an Order of Possession if one was issued. The Landlord's son said the end of May.

Other than the written submissions, the Landlord provided the following evidence:

- Photos of a mattress and bed frame in the front yard
- A photo of tire tracks in the front lawn
- A letter from the city about cleaning up the front yard stating that if the Landlord does not, the city will and will charge the Landlord. It also states that the city may prosecute the Landlord for a by-law offence.
- Photos of the backyard with part of a bed, wood and cigarette butts
- A violation notice from the city for violating the following requirement "1 m cart-clearance required on all sides, 1.5 m from cars" in relation to garbage
- Photos of garbage on the kitchen veranda
- A photo of a vehicle parked close to, or against, the garage door
- Hydro usage summary
- Invoice for a fridge
- A signed letter from the Landlord's brother about the repair issue
- Invoice for a washer and dryer
- Invoice for removal of items
- A signed letter from I.F. about why he attended the rental unit address March 15, 2020. This letter does not state anything about an assault.

### Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when 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;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

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 of Procedure, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Ending a tenancy under section 56 of the *Act* is reserved for the most serious of circumstances. The circumstances must be urgent.

I do not accept that any of the issues raised, other than the alleged assault, are serious enough to justify ending this tenancy under section 56 of the *Act*. The nature of the issues raised are such that they are not serious or significant enough to justify ending this tenancy under section 56 of the *Act*. Further, the documentary evidence does not

support that the issues raised are serious or significant enough to justify ending this tenancy under section 56 of the *Act*.

I am not satisfied based on the submissions of the Landlord's son, or the documentary evidence, that any of the issues, other than the alleged assault, are urgent or justify ending this tenancy immediately. All of the issues, other than the alleged assault, are the type of issues that should be dealt with by way of a One Month Notice under section 47 of the *Act*. I do not accept that it would be unfair or unreasonable to require the Landlord to deal with the issues raised, other than the alleged assault, by way of a One Month Notice because the evidence does not support that the issues are serious or significant enough to find this unfair or unreasonable.

To be clear, I have not found that the Tenant is responsible for the issues raised by the Landlord. I do not find it necessary to do so. Even assuming the Tenant is responsible for the issues raised by the Landlord, the issues do not justify ending this tenancy under section 56 of the *Act*.

I did not rely on this in finding that the circumstances do not meet the two-part test set out in section 56 of the *Act*; however, I do note that the Landlord is seeking an Order of Possession for the end of May. This is more than a month out from the hearing. I do note that this supports the finding that the issues raised are not urgent and it would not be unfair or unreasonable to require the Landlord to wait for a One Month Notice to take effect.

The alleged assault is a different matter. If I was satisfied the Tenant assaulted the Landlord, I would find that the two-part test under section 56 of the *Act* has been met. However, the only evidence provided of the alleged assault is the Landlord's written submissions that it occurred. The Tenant attended the hearing and denied that he, or anyone on the property, assaulted the Landlord. The Landlord bears the onus to prove the alleged assault occurred. In the absence of further evidence to support the Landlord's written submissions, the Landlord has failed to prove the assault occurred. Given I am not satisfied based on the evidence provided that the assault occurred, I am not satisfied the tenancy should end under section 56 of the *Act* on this basis.

Given the above, the Landlord has failed to prove the circumstances meet the two-part test set out in section 56 of the *Act*. The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: April 28, 2020

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Residential Tenancy Branch