



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act; and
- recovery of the filing fee paid for this application.

The landlord, the landlord's assistant/witness and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and neither party raised an issue about the service of the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

Due to the written submissions of the landlord, it was necessary to determine whether I had jurisdiction over her dispute. This matter was considered first in the hearing.

### Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Residential Tenancy Act so that I have authority to resolve this dispute?
2. If so, should the tenancy end early and an Order of Possession be granted to the landlord; and
3. Is the landlord entitled to recover the filing fee?

### Background and Evidence

#### *Jurisdiction –*

In her application, the landlord stated that there was no tenancy, rather, the relationship between the parties was a house-sitting arrangement due to her medical emergency at the time.

The landlord submitted that the tenant was to vacate the rental unit on March 31, 2020, and refused to do so. Due to this, the police were called when she tried to have the tenant leave, which caused great stress.

The landlord agreed she collected a monthly sum of \$1,100, but that this was a fee, not rent, to cover the costs of the utilities and the internet.

The landlord said that she moved-out of her home due to her medical emergency at the time and as an act of kindness, she allowed the tenant to move in. The landlord submitted that the rental unit was her only home and she wanted to return. She also said that she was not allowed rentals by the strata.

In response to my inquiry, the landlord explained why she filed this application for relief under the Residential Tenancy Act, even though she does not believe this arrangement is a residential tenancy. The landlord said that the tenant filed his own application and when she called to speak with staff at the Residential Tenancy Branch (RTB), she was advised to handle the situation by filing her own application for an emergency end to the tenancy.

In further response, the landlord said she did not collect a security deposit from the tenant and that the agreement was that the tenant could leave at any time.

The landlord's witness, SR, agreed to the landlord's submissions and that the landlord's main reason for temporarily leaving was that she could not be on her own at the time.

The landlord's relevant evidence included medical information, a signed statement from witness SR, and an email to the tenant.

In response to the landlord's claim that the parties did not have a tenancy agreement, the tenant said the parties did agree upon a tenancy, and that is why he paid her \$1,100 per month in rent. The tenant said that he had another chance to housesit at the same time for a friend, and that if this arrangement was strictly for housesitting purposes, he would not be paying rent. The tenant said it is usually the other way around in a housesitting situation.

The tenant said the parties agreed to a term of six months, then the tenancy would be on a month-to-month basis after June 2020. The tenant submitted that the parties even discussed a possible purchase of the home by the tenant.

The tenant submitted he would not have moved into the rental unit for just a month or two, and that he paid rent by cash in January and February, as requested by the landlord, and by e-transfer in March and April, as he was on a six week vacation abroad. The tenant said he would not have paid rent for March and April while traveling if they did not have a tenancy agreement.

The tenant referred to his documentary evidence, which contained emails between the parties. In particular, the tenant pointed out that in an email from the landlord on March 4, 2020, the landlord mentioned that she "set a lower than usual rent at \$1100" and extended it fully furnished as he was a friend and all he had was his clothes to move in.

In another email from the landlord to the tenant, dated February 21, 2020, the landlord informed the tenant that for health reasons, she had decided to retire and to sell her home. The landlord said that there were a few people interested in buying her home.

*Evidence to support the landlord's application to end this tenancy early –*

The landlord did not submit evidence to support that she has any cause listed in section 47 of the Act to end this tenancy.

The landlord's evidence related to her assertion that there was no tenancy agreement between the parties.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *Jurisdiction-*

Section 62 (2) of the Act stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

Section 1 of the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Residential Tenancy Branch (RTB) Policy Guideline 9 states that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy was created, unless there are circumstances that suggest otherwise.

Some factors that may weigh against finding a tenancy are a security deposit is not required and the occupier pays property taxes and utilities, but not a fixed amount for rent, among others.

In the circumstances before me, I find on a balance of probabilities that the parties agreed upon an oral, month-to-month tenancy agreement. In reaching this conclusion, I considered that the landlord herself in an email referred to the payment of \$1,100 paid by the tenant as rent. I also find that the tenant submitted sufficient evidence that he has paid the monthly rent of \$1,100 since January 2020, although the landlord said she has not accepted his e-transfer.

While it is common that a landlord collect a security deposit, it is not a requirement.

Additionally, the landlord's own witness, in his signed statement, said the parties had a short term, month-to-month agreement. I find this terminology further confirms a tenancy agreement formed between the parties.

I find the written evidence shows that the landlord's circumstances had changed since the tenant moved in in December 2019, due to her retirement. Despite the landlord's statements at the hearing that she wanted to resume living in her home, as her health-related issues has improved, I find the evidence supports that her reason for seeking an early end to the tenancy was to sell her home.

The tenant's evidence, the email thread between the parties, was consistent in stating that he understood the tenancy was to go through June 2020, and that this arrangement was not for housesitting purposes.

While both the landlord and her witness asserted that the agreement could be cancelled at any time, the tenant disputed this assertion. I find disputed oral evidence, without anything further, does not allow the claimant to meet their burden of proof on a balance of probabilities.

For the above reasons, I find that a tenancy agreement formed between the parties and that I have jurisdiction under the Act to decide this dispute.

*Application to end the tenancy early -*

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice to end tenancy if sufficient cause is established and the landlord demonstrates that it would be both unfair and unreasonable to allow the tenancy to continue until a one month Notice to End Tenancy under section 47 would take effect.

I deny the landlord's application as I find that the landlord has not met the test required under section 56 of the Act to end this tenancy early.

The sole reason the landlord provided at the hearing for filing this application was due to advice received by the RTB, as the tenant has also filed an application, for a hearing on a later date in May 2020.

I do not find filing for an expedited hearing for consideration of the landlord's assertions prior to the tenant's application to be sufficient reason.

Due to the above, I find the landlord has not provided any compelling evidence or reasons to demonstrate that it would be unreasonable or unfair to the landlord to wait for a notice or hearing for dispute resolution under section 47 to take effect. As a result,

I dismiss the landlord's application, without leave to reapply, including her request to recover the filing fee.

*Additional matters-*

I find it important to note that the tenant, in his oral and written evidence, provided some points of concern regarding the landlord's alleged actions in seeking him removed from the rental unit.

The tenant has filed his own application for dispute resolution addressing those concerns, which is to be heard by another arbitrator at a later date.

While it is inappropriate to make findings on those matters, I informed the landlord she should not enter the rental unit without notice to the tenant, until receipt of my Decision. Further, the landlord was informed that if I found in favour of a tenancy, she is prohibited from entering the rental unit without a proper, written notice to the tenant.

Conclusion

I have found that I had jurisdiction to decide this dispute as I found that a tenancy agreement was formed between the parties.

I have dismissed the landlord's application seeking to end the tenancy early as I have determined that the landlord has not demonstrated that it would be unfair or unreasonable for the landlord to wait for a notice to end tenancy to take effect under sections 47 of 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: May 6, 2020

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Residential Tenancy Branch