



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code: ET

### Introduction

In this dispute, the landlord seeks to end a tenancy pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on March 29, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 12, 2020. The landlord, two witnesses for the landlord, the tenant, and the tenant’s advocate attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

No issues of service were raised by either party, though the tenant mentioned that she did not have a copy of the written tenancy agreement, which the landlord had submitted into evidence. I also note the landlord raised an issue with respect to only receiving the tenant’s evidence eight days before the hearing. Under [Rule 10.5](#) of the *Rules of Procedure* the time limit for respondent’s evidence to be served on the applicant is a minimum of two days before the hearing. As such, the tenant did not breach the *Rules of Procedure* in respect of the service of evidence and I make no adverse findings in this respect.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issue of this application. As such, not all of the parties’ testimony may necessarily be reproduced.

### Issue

Is the landlord entitled to end the tenancy under section 56 of the Act?

### Background and Evidence

The landlord testified and submitted that the primary reason he is seeking to end the tenancy early, under section 56 of the Act, is that things have been “escalating” and that is it “mostly due to noise complaints and other issues.” He argued that the other tenants (two of whom live in a separate suite below the tenant’s rental unit) are suffering undue hardship. There is “no end” to the noise. Referring to various exhibits submitted into evidence, the downstairs tenants complain of frequent stomping. The downstairs tenants have been yelled at through the air vents in the house. In addition, the landlord testified that the tenant has made exaggerated claims and “wild accusations” against the downstairs tenants.

Additional issues for the landlord wanting to end the tenancy under section 56 related to the tenant taking the key to the shared mailbox and throwing it over the fence. The landlord had to make another copy of the key. Mail was allegedly being collected by the tenant, so the downstairs tenants were not receiving their mail; one of the downstairs tenant’s rent cheque went missing. The tenant was referred to as “the sole mail gatherer.” This issue, however, apparently has been resolved. Another issue is that the tenant accused one of the other tenants of scratching her Jeep and stealing food from the freezer. The tenant apparently installed a security camera against the landlord’s wishes. On April 15, 2020, the tenant apparently turned off the furnace (which heats the entire house), thus leaving the downstairs tenants freezing. A screen over one of the downstairs tenant’s windows went missing, and that tenant is concerned for her safety. (The landlord admitted, however, that he could not prove that the tenant was the one who removed the screen.) There are, he went on to say, “constant calls to the police,” including an incident on April 17, 2020. More recently, on May 1, the police were called due to the tenant complaining about noise from downstairs. The police officer departed shortly after arriving, “almost apologizing” that there was no actual noise issue.

The landlord’s witness J.A. testified that their main concern is noise and an allegation of sexual impropriety. They also testified that the WIFI password (WIFI is included in everyone’s rent and is shared by all of the tenants) would be changed by the tenant (the tenant has access to the modem) and they had to contact the tenant in order to get the new password. This happened more than twice. They also testified that the noise was so bad at one point that they could not stay in the home for a while. It was “not pleasant,” they added.

The landlord's other witness, O.O., testified that the noise is continuous, and "all night long." There is stomping, and "it's continuous and stuff." The tenant has only been living in the rental unit for a couple of months but does not feel safe. They did not elaborate.

I note that the tenancy is a fixed-term tenancy that started July 1, 2019 and is to end on July 1, 2022. Monthly rent is \$2,285.00. A copy of the written tenancy agreement was submitted into evidence by the landlord.

In response, the tenant testified that "it's all ridiculous." And, that yes, she has complained about the noise, and that police have come. She described how one of the downstairs tenants would invite dates over on a frequent basis and have sex with them (sometimes in the hot tub) causing much noise. Continuing, the tenant testified that the landlord must be having "a bit of a mid-life crisis" and is trying to get back at her for not being as helpful as she has been before. She explained that many other houses in the neighbourhood have cameras installed for security purposes, and that there is nothing wrong with having one on their house as well. "All I want is to pay rent and live peacefully," the tenant remarked.

In his closing remarks, the landlord argued that "she's terrorizing the downstairs tenants." He then went on to say that he would be happy to end the tenancy if the tenant agreed to it and would let the tenant forgo remaining rent.

In their closing submissions the tenant's advocate reiterated that an application under section 56 is made in exigent circumstances. But, the landlord's proposal to mutually end the tenancy, including concessions for rent, contradicts the landlord's claims about why the application was made under section 56 and "doesn't show any urgency." She concluded by arguing that the landlord's evidence has not established the claim to end the tenancy early.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56(1) of the Act permits a landlord to make an application for dispute resolution to request an order (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56(1), I must be satisfied that

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - (iii) put the landlord's property at significant risk;
  - (iv) engaged in illegal activity that
    - (A) has caused or is likely to cause damage to the landlord's property,
    - (B) 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, or
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
  - (v) caused extraordinary damage to the residential property, and
- (b) 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 [*landlord's notice: cause*] to take effect.

In this case, the evidence clearly shows that the downstairs tenants have been unreasonably disturbed by the tenant's stomping about. Indeed, I note that the tenant did not refute or dispute any of the landlord's or his witnesses' testimony or claims about the noise. (Though, it appears that both the tenant and the downstairs tenants have been engaged in a noise war, with one party yelling through vents and the other yelling back.)

However, the landlord has not established that it would be unreasonable or unfair to either the landlord or the other occupants to wait for a notice to end the tenancy under section 47 of the Act. While the landlord frequently referred to the downstairs tenants as "being terrorized" and stated in his written submission that they "now live in a state of **terror**" (emphasis in original), the witnesses' testimony does not support the landlord's claim. Certainly, both downstairs tenants have been dealing with the tenant's noise-making, but neither said that they were living in terror. I also find it peculiar that the landlord is amenable to working out a mutual agreement to end tenancy with the

tenant, which rather undermines any exigency to the application. The landlord's request, as stated in the summary of his written submission, is for the tenant "to agree to a move-out date, and actually vacate the property, within the next six months, and in turn I will negate the penalty for ending her fixed term early." I find it difficult to believe that a landlord seeking to evict a terrorizing tenant would also give the tenant an opportunity to remain in the rental unit for up to six more months. Quite simply, it belies logic.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their application for an order under section 56(1)(b). While the landlord may have a reason to issue a One Month Notice to End Tenancy for Cause under section 47 of the Act – though I make no such finding of fact or law in this case – he has not met the stringent requirements for an order under section 56(1). For these reasons I dismiss his application, without leave to reapply.

### Conclusion

I dismiss the landlord's application, without leave to reapply.

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: May 12, 2020

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Residential Tenancy Branch