



# 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 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.

The landlord, the landlord's spouse, the landlord's legal counsel and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

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-

The evidence was discussed and the tenants said they had not received the landlord's evidence.

The landlord's legal counsel said she had just been retained by the landlord a few days prior to the hearing and that she emailed the evidence to the tenants on May 14, 2020.

It was undisputed that the landlord failed to serve the tenants his evidence with his application for dispute resolution, as required by Rule 10.2, the section dealing with expedited hearings.

I therefore excluded the landlord's evidence from consideration.

### Issue(s) to be Decided

Should the tenancy end early and an Order of Possession be granted to the landlord?

### Background and Evidence

There was no written tenancy agreement and the evidence was unclear as to when the tenancy began. I heard testimony that the tenant was a former tenant, moved out, and then moved back into the basement suite.

I also heard testimony that the monthly rent is \$1,600.

The issues around this application concern the landlord's assertion that there was a major leakage and the basement area was flooded for 10 days. The landlord submitted that the basement suite was unsafe for anyone to stay in.

The landlord submitted that there needs to be immediate repairs to the basement suite and that the tenant has denied entry to the rental unit.

The landlord's relevant evidence included text message communication between the parties, beginning with one from February 27, 2020.

### *Tenant's response-*

The tenant denied that she prevented the landlord access to the rental unit; however, she submitted that she has a compromised immune system and wanted to take precautions during the Covid-19 crisis, which meant she requested the landlord or his contractors to use personal protective equipment.

The tenant submitted that the landlord had asked that the two male tenants make the repairs from the flood, to give him a receipt showing an additional \$1,000 in order to present the bill to the insurance company.

## Analysis

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

Section 56 of the Act is an extraordinary remedy which grants the Director authority to end a tenancy without a notice to end the tenancy if sufficient cause is established.

Section 56 (2) of the Act indicates that:

The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

The burden of proof is on the landlord to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In this case, I find the landlord submitted insufficient evidence to support their application.

The landlord has not presented evidence that the tenants or someone they have allowed on the property have done any of the causes listed above. The issues addressed by the landlord relate to the flood or water damage in the basement, and the landlord's evidence did not attribute the flood to any fault of the tenants.

Additionally, the tenant, LC, submitted that the matter was addressed with the repairs made by the other two tenants.

Additionally, the landlord's evidence shows that these matters arose as early as February 2020, which I find takes away any emergency aspect of the matter.

I find that all the stated reasons for an early end to the tenancy brought forward by the landlord can be addressed through an application seeking entry to the rental unit to make such necessary or emergency repairs to the rental unit, if the tenants denied access. I do not find there to be sufficient evidence that this was the case.

I therefore find the landlord has provided insufficient evidence to support their application seeking 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.

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

### Conclusion

The landlord's application was dismissed due to insufficient evidence.

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 19, 2020

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Residential Tenancy Branch