



# 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 [landlord's notice for cause]; and
- recovery of the filing fee.

The landlord and the tenant 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 affirmed testimony 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; the tenant said he had not received any of the landlord's evidence.

The landlord confirmed that he had not sent his audio and video (digital) evidence to the tenant.

As it was undisputed that the landlord failed to serve the tenant 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.

I additionally note that I was unable to hear or view most of the audio or video files sent by the landlord.

I note that the landlord submitted he had a witness, which was one of the other tenants living in the residential property, and that the witness was given the information for dialling into the hearing by the landlord. The witness did not call in or participate during the 60 minute hearing.

#### Issue(s) to be Decided

1. Has the landlord submitted sufficient evidence that this tenancy should end early and an Order of Possession be granted to the landlord?
2. Is the landlord entitled to recovery of the filing fee?

#### Background and Evidence

The landlord confirmed he had not prepared a written tenancy agreement. The landlord submitted that the tenancy began on January 2, 2019, and the tenant said he believed it started on January 1, 2019. The undisputed evidence is that monthly rent is \$800.

The rental unit is a bedroom in a house, which is shared by four other tenants renting different bedrooms. The tenant resides in a bedroom in the lower suite.

In support of his application, the landlord submitted that the tenant has done at least one of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

In explanation, the landlord submitted that the tenant has tried to assault a tenant (JR) living upstairs, that they have had loud arguments, and that the tenant walked around with a big knife.

The landlord submitted that the tenant was yelling at JR and broke one of his windows.

The landlord submitted that JR has called the police three times and that the tenant was taken away one of the times.

The landlord submitted that on May 5, 2020, he received a message from the other tenant living in the lower suite to inform the landlord that the police have arrived and they had taken notes from three other tenants.

The landlord also submitted that the tenant had disconnected the internet connection from the wall, provoking a loud argument.

In response to my inquiry, the landlord said that JR moved into the residential property in August 2019, and further, that the police had not been called out prior to that time, since the beginning of the tenancy.

#### *Tenant's response –*

The tenant said that he had evidence to provide, but did not know what to send in as he had not received the landlord's evidence.

The tenant said he has bi-polar disorder and does not remember three arguments, but confirmed that he was taken away one night and put into hospital for evaluation.

The tenant submitted that he has not gotten along with the other tenant in question, as that tenant has provoked many arguments.

The tenant said that he did have a knife at one point, but that the other tenant was trying to push through his door. The tenant submitted that he did not use the knife, but retrieved it for self-defence, as the other tenant was threatening and verbally assaulting him. The tenant said that he had to wipe the other tenant's spit off his face.

#### 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.

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 his application.

As I have noted, I excluded the landlord's digital and written evidence, as he failed to serve that evidence on the tenant, as required. Therefore, the evidence in this matter was affirmed oral evidence.

I find that where 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, the landlord in this case, has not met that burden.

In this case, the landlord said he received calls from the other tenant about the tenant's actions and that police were called. I, however, find that the landlord did not provide firsthand, direct knowledge of the events of those times. The landlord's witness did not call into the hearing to provide direct evidence.

I find the tenant provided a plausible explanation that he only picked up the knife when JR was threatening him, trying to enter his room, and was acting in self-defence.

Additionally, I find the landlord has failed to prove the nature of the police call-outs as it directly relates to the conduct of the tenant, or the results of any police investigation. The landlord was at liberty to apply for a summons to obtain police reports or an officer's attendance.

In the presence of the disputed testimony, I find the landlord submitted insufficient evidence to prove the tenant's actions adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord or jeopardized a lawful right or interest of another occupant or the landlord.

I therefore find the landlord has provided insufficient evidence to support his 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 21, 2020

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Residential Tenancy Branch