



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

The landlord filed an Application for Dispute Resolution on May 12, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on May 25, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

Both parties attended the hearing. I provided each the opportunity to present oral testimony and make submissions during the hearing.

In the hearing the landlord stated that they delivered notice of this dispute resolution to the tenant via registered mail. Additionally, they posted this notice document to the door of the rental unit in which the tenant resides. The tenant confirmed receipt of the same.

The landlord also provided evidence and the tenant confirmed receipt of same. The tenant stated they did not provide evidence for this hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause. After taking an oath from the landlord, I gave them the opportunity to speak to the issue at hand.

Both parties verified the terms of the tenancy agreement: the start date of August 15, 2019; the monthly rent amount of \$1,775.00; and the payment of a security deposit in the amount of \$887.50. The landlord provided a copy of the residential tenancy agreement that was signed by both parties.

The landlord provided both documentary evidence and oral testimony to show how the conduct of the tenant constitutes a reason to end the tenancy for cause. The documents are written statements of parties involved in an incident on May 5, 2020 involving the tenant and another resident and a resident manager. These are: the landlord; their partner; and other resident managers from the rental property.

The landlord's description of the event is that the tenant returned to the building and tried to gain entry by asking another building resident to let them in the front door. This led to an altercation; that resident spoke to the police and the landlords. The tenant then tried to enter the building by speaking with the Assistant Resident Manager – this led to the tenant trying to obtain keys from that person directly, in an agitated state. There is a video in the evidence of this interaction and this incident was also reported to the police.

The landlords verified to the tenant that their means of entry to the building – key fobs – were not cancelled. The written statement of another resident manager shows the two key fobs were replaced at the time of the incident, this when the tenant was "incredibly agitated".

The tenant gave the following testimony in the hearing:

- they perceived that the key fobs were cancelled due to rent payment issues with a significant amount overdue;
- their name label was removed from the front door directory;

- the unit locks were “flipped” whereby the door lock is turned alternately on its axis – the tenant perceived this was a change in locks;
- they did not initiate the altercation with the other tenant at the front door; rather, the other tenant “put [their] hand on [me] first”, resulting in spillage of beer on that other individual;
- they did not attempt to grab keys from the resident manager – this was merely pointing at the keys and the video capture would not be accurate.

The tenant acknowledged that police arrived and pressed charges. The tenant reiterated their concern that the landlords are trying to evict them, using this event as a pretext rather than present the real issue which is unpaid rent amounts.

### Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may 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 tenancy were given under section 47 [*landlord’s notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Additionally, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

I have considered the evidence of the tenant's behaviour and I find it was inappropriate, and even confrontational. There is evidence of liquor being consumed either prior to or in the presence of others. I find that the tenant conducted themselves in line with what consumption would often suggest: poor judgment in circumstances when they felt challenged or choosing to address topics that were causing tension in their tenancy. On the part of the tenant, I find their misunderstanding escalated beyond a rational discussion; however, I find this is not a situation of a forced entry into the building. I find the tenant's actions do not equate to a threat pointing toward imminent danger.

The landlord provided evidence that the police gave them information about the tenant breaching conditions of an agreement. I find this lessens the weight of the evidence concerning a charge of assault. I also make this consideration with due regard to the test in criminal matters being whether facts are true beyond a reasonable doubt. The test I must apply here is whether facts are true based on a balance of probabilities.

The statement of one assistant resident manager is evidence that shows they replaced the tenant's key fobs at the time of the incident. I find this shows the landlord obliged the tenant's request, rectifying the issue of his regular entry to the building. Examining the determining factors of section 56(2), I find the landlord replacing the fobs to the tenant – thereby allowing them full access and entry to the building – does not match in severity to any of those criteria.

In conclusion, I find the tenant's behaviour does not rise to a level that is sufficient to end the tenancy in this manner. An expedited hearing process is for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, so significant that it would warrant the tenancy end sooner than had the landlord issued a One Month Notice to End Tenancy for Cause. I find that the evidence and oral testimony presented by the landlord does not show this to be the case.

I find the landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of section 56. I am not satisfied that the matter at hand is one that is above what would normally be covered by a section 47 one month Notice to End Tenancy.

As the landlord was not successful in this application, I find they are not entitled to recover the filing fee paid for this application.

### Conclusion

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed 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 *Residential Tenancy Act*.

Dated: May 28, 2020

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Residential Tenancy Branch