



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for an early end of tenancy pursuant to section 56 of the *Act* and to recover the cost of filing the application from the Tenant. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been served to the Tenant by registered mail sent on May 15, 2020, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to an early end of tenancy and an Order of Possession, under 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

The tenancy agreement shows that this tenancy began on February 1, 2020, as a month to month tenancy. Rent in the amount of \$1,150.00 is to be paid by the first day of each month, and the Tenant paid the Landlord a \$575.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the tenancy agreement stated that there was no smoking in the rental unit. The Landlord testified that the Tenant and their guest have regularly smoked in the rental unit and that their smoking is exposing the Landlord and their family to second-hand smoke, which is a serious health risk.

The Landlord testified that they served the Tenant with a warning letter, informing the Tenant of the breach to the tenancy agreement, and reminded the Tenant that there was no smoking in the rental unit. The Landlord testified that the Tenant has continued to smoke in the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an Early End to Tenancy and an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act* for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, a landlord has the burden of proving that:

- There is sufficient cause to end the tenancy such as; unreasonably disturbed another occupant, seriously jeopardized the health, or safety, or a lawful right, or interest of the landlord, engaged in illegal activity, or put the landlord's property at significant risk; and
- That it would be unreasonable or unfair to the landlord or other occupants to wait for a one month notice to end tenancy for cause under section 47 of the *Act* to take effect.

In this case, while the Tenants conduct may have been a breach of this tenancy agreement, and may have been disturbing to others, I find the circumstance of this case are not so significant or severe that it would have been unreasonable for the Landlord to have to wait for a One Month Notice to take effect if there was sufficient cause to end the tenancy. Therefore, I find that the Landlord has fallen short of the standard required to obtain an early end of tenancy under section 56 of the *Act*.

Therefore, I dismiss the Landlord's application for an early end of tenancy under section 56 of the *Act*, as I find it neither unreasonable or unfair that the Landlord would need to wait for a One Month Notice to take effect and for the required hearing process under that notice.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this hearing.

### Conclusion

I dismiss the Landlord's application for an early end of tenancy and to recover their application fee. This tenancy continues until ended in accordance with 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: June 4, 2020

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Residential Tenancy Branch