



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

ET AND FFL

### **Introduction**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for an early end to the tenancy, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 15, 2020 the Dispute Resolution Package was personally served to the Tenant and was also emailed to the Tenant. Service by email was permitted in May of 2020, due to the COVID-19 pandemic. On the basis of the undisputed evidence, I find that the Dispute Resolution Package was properly served to the Tenant. As the Dispute Resolution Package was properly served to the Tenant, the hearing proceeded in the absence of the Tenant.

In May of 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant with the Dispute Resolution Package. On the basis of the undisputed evidence, I find that the evidence was served to the Tenant and it was accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should this tenancy end early and, if so, should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord stated that:

- this tenancy began on October 02, 2019;
- in November of 2019 the Tenant and her boyfriend assaulted another occupant of the residential complex;
- the Tenant pulled the other occupant's hair during the assault;
- the assault was reported to the police, but no charges were laid;
- shortly after the assault in November of 2019 he served the Tenant with a One Month Notice to End Tenancy for Cause;
- the Tenant did not vacate the rental unit on the basis of the One Month Notice to End Tenancy for Cause;
- the Landlord did not attempt to enforce the One Month Notice to End Tenancy for Cause;
- there has been no further violence between these parties since November of 2019;
- since this tenancy began the Landlord has needed to caution the Tenant about noise and smoking several times per month;
- every time the Landlord speaks to the Tenant about noise/smoking she threatens to physically harm him;
- the Tenant has never acted on any of her threats to harm him;
- the noise and smoking issues are becoming "progressively worse";
- the threats of violence are not increasing;
- the Landlord has not served a second One Month Notice to End Tenancy for Cause, in part, because he did not "know what to do";
- the Landlord has not served a second One Month Notice to End Tenancy for Cause, in part, because he hoped the problems would "settle down"; and
- the Landlord is now seeking an early end to tenancy because he does not want the tenancy to continue until the COVID-19 pandemic ends.

## Analysis

Section 56(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the Act and he may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) if the *Act* authorizes me to grant an Order of Possession in these circumstances only if 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 to take effect.

On the basis of the undisputed evidence, I find that the Tenant and her boyfriend assaulted another occupant of the residential complex in November of 2019. Even if I were to conclude that this incident was grounds to end this tenancy, I would not conclude that that the Landlord has the right to end this tenancy pursuant to section 56

of the *Act*. As this incident occurred in November of 2019 and there has been no further violence between the parties, I find that it would not be unreasonable or unfair to the Landlord or another occupant of the residential property to wait until this tenancy could be ended on the basis of the assault, pursuant to section 47 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant frequently threatens to harm the Landlord. Even if I were to conclude that these threats were grounds to end this tenancy, I would not conclude that the Landlord has the right to end this tenancy pursuant to section 56 of the *Act*. As these threats have been made since the beginning of the tenancy and the Tenant has never acted on the threats, I cannot conclude that the Landlord is in any immediate danger, I therefore find that it would not be unreasonable or unfair to the Landlord or another occupant of the residential property to wait until this tenancy could be ended on the basis of the threats, pursuant to section 47 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant has been causing disturbances in the residential complex. Even if I were to conclude that these disturbances were grounds to end this tenancy, I would not conclude that the Landlord has the right to end this tenancy pursuant to section 56 of the *Act*. As these disturbances have allegedly been occurring for a long time, I find that the Landlord should be attempting to end this tenancy pursuant to section 47 of the *Act*. I find that it would not be unreasonable or unfair to the Landlord or another occupant of the residential property to wait until this tenancy could be ended on the basis of the threats, pursuant to section 47 of the *Act*.

I find that the Landlord has applied for an early end to this tenancy simply to avoid the restrictions imposed by *Ministerial Order M089*, which currently prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. This is clearly not the purpose of an early end to the tenancy.

I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 56 of the *Act*. I therefore dismiss the Landlord's application to end the tenancy early and for an Order of Possession.

As the Landlord has failed to establish the merit of his Application for Dispute Resolution his application to recover the filing fee is dismissed.

Conclusion

The Application for Dispute Resolution 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: June 05, 2020

---

Residential Tenancy Branch