



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 28, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord R.Y. and the Tenant attended the hearing at the appointed date and time. The Landlord stated that she served the Tenant with a copy of the Application and documentary evidence by registered mail on May 29, 2020. The Landlord provided a copy of the receipt in support. The Tenant stated that he received the Landlords' Application, however, he did not retrieve the package until June 20, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on June 3, 2020, the fifth day after the registered mailing.

The Landlord stated that she submitted further documentary evidence to the Tenancy Branch on June 18, 2020, however, she did not serve a copy to the Tenant. According to the Residential Tenancy Branch Rules of Procedure 3.14; documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing.

As the Landlord did not serve a portion of their documentary evidence to the Tenant prior to the hearing, I find that the evidence provided by the Landlords to the Tenancy

Branch on June 18, 2020 will not be considered as the Tenant is unable to respond to evidence that he has not received.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; that the tenancy began on May 1, 2020. Currently, the Tenant pays rent in the amount of \$1,300.00 which is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 which the Landlords continue to hold.

The Landlord stated that they are seeking to end the tenancy early based on the fact that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The Landlord stated that she has received several complaints from other occupants as well as neighbours regarding their concerns with the Tenant and his guests.

The Landlord stated that the Tenant has been smoking, which has impacted the occupants who reside at the rental property. The Landlord stated that the Tenant has had up to 10 people visiting his rental unit. The Landlord stated that some of the guests appear to be drug users and are known to Police. The Landlord stated that they suspected that the Tenant was operating a Meth lab in the rental unit. As such, the Landlord contacted the Police who attended the rental unit and determined there was no Meth lab found. The Landlord stated that she is scared to attend the rental unit as the peacefulness has been disturbed.

In response, the Tenant stated that he does not smoke and has never had that many guests over to the rental unit. The Tenant stated that he works full time and that the

Landlord is being unreasonable with her allegations. The Tenant stated that there is no Meth lab in the rental unit and that the Landlords changed the locks to the rental unit. The Tenant stated that the rental property is listed for sale and that the occupants who resided upstairs have moved out. As such, the Tenant feels as though the Landlord is only seeking vacant possession of the rental unit to sell it.

### Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy 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*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

*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...*

- (a) *The tenant or a person permitted on the residential property by the tenant had 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 landlords 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 causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlord indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding noise, unfavourable guests, smoking, and a suspected Meth lab, which has generated Police contact. The Tenant denied the Landlord's claims and feel as though the Landlords have an ulterior motive to ending the tenancy.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect.

I find that the Landlord provided evidence that there is no Meth lab in the rental unit. Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has an unreasonable number of guests at the rental unit, and that these guests are causing immediate and severe risk to the Landlords, other occupants, or the rental property. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlords' Application, without leave to reapply.

As the Landlords were not successful with their Application, the Landlords are not entitled to recover the filing fee from the Tenant.

Conclusion

The landlords have provided insufficient evidence to prove that the tenancy should end early under section 56. The tenancy will continue 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 22, 2020

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Residential Tenancy Branch