



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET FFL

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order to end the tenancy early for health or safety reasons under section 56 of the Act and to receive an order of possession, and to recover the cost of the filing fee.

The landlords, an agent for the landlords AA (agent), the tenant and an agent for the tenant HE (tenant agent) attended the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified that they were served with the landlords' documentary evidence and their application and that they had the opportunity to review both prior to the hearing. The tenant also confirmed that they did not serve documentary evidence on the landlords. As a result, I find the tenant was sufficiently served in accordance with the Act.

I have considered all relevant evidence presented and my findings refer to the relevant evidence presented. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issues to be Decided

- Are the landlords entitled to end the tenancy early for health or safety reasons and obtain an order of possession?
- If yes, are the landlords entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The landlords have applied for an order of possession to end the tenancy early based on the following:

The tenant is significantly interfering and unreasonably disturbing all 3 occupants of the house in which her suite is situated. She has been calling the police on numerous occasions for no valid reason and harassing us. She is consistently leaving the stove on and is burning things, our house is on multiple occasions filled with smoke/burning smells, we are fearful it is going to be burnt down one day. She is also forgetting her keys in her door leaving the premises open to theft/break-ins

The agent testified that over the last year to six months the tenant has set off the smoke alarm due to cooking. There was no evidence presented on there being a fire or that the fire department was called. The agent was unable to provide a specific date for the smoke alarm incident but did confirm it was on one occasion.

The agent then stated that the tenant has called the police on the landlords, to which the parties were advised that the tenant contacting the police would not meet the high burden of proof for the application before me under section 56 of the Act.

As a result, the agent was asked to provide the most serious allegation that resulted in the landlords applying to end the tenancy early without having to serve a 1 Month Notice to End Tenancy for Cause (1 Month Notice) under the Act. The agent testified that the tenant has left their keys in the rental unit door; however, was unable to provide specific such as a date this occurred.

The agent testified that the tenant was served with a 1 Month Notice in February 2020 and did not dispute the 1 Month Notice.

The tenant denies all accusations by the landlords.

### Analysis

Based on the documentary evidence and the testimony of the parties during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act states:

**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 the 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.

(2) 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, **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.**

[Emphasis added]

The burden of proof in this matter is on the landlords to prove that it would be unreasonable, or unfair to the landlords or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect.

In the matter before me, the agent testified that a previous 1 Month Notice was served on the tenant and was not disputed by the tenant. In addition, I find that the landlords have provided vague details and could not provide specific dates to support this application. Furthermore, I find that the tenant setting of a smoke detector once without any supporting evidence that it was done on purpose or that there was fire damage, does not meet the high standard of proof under section 56 of the Act.

Furthermore, I find that forgetting their keys in the lock without a specific date or contacting the police by the tenant regarding the landlord does not meet the standard of proof under section 56 of the Act. Therefore, I find that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the Act. Consequently, **I dismiss** the landlords' application in full due to insufficient evidence.

As the landlords did not succeed with their application, **I do not grant** the landlords the recovery of their filing fee.

This decision will be emailed to both parties at the email addresses confirmed during the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 2, 2020

---

Residential Tenancy Branch