



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 19, 2020, in which the Landlord sought an early end to tenancy pursuant to section 56 of the *Act*.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on July 14, 2020. Only the Landlord's Agent (name as Landlord on the Application) called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Landlord's Agent confirmed that he is the Landlord's son. He stated that his father suffered a head injury, suffers from early onset dementia, and as a result he was appointed Power of Attorney over his father's affairs. Further, he testified that as of May 30, 2020 the Tenant was informed that she was to direct all communication relating to the tenancy to his attention. A copy of the letter which was sent to the Tenant confirms the agency status of the Landlord's son.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:22 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that he served the Tenant with the Notice of Hearing and the Application on June 22, 2020 by posting to the rental unit door and by emailing the

application materials to the Tenant. At that time, and by Director's Order dated March 30, 2020, notice of a hearing was servable by e-mail if the sender and recipient e-mail addresses had been routinely used for tenancy matters.

The Landlord's Agent testified that he regularly communicated with the Tenant by email regarding her tenancy. Based on his undisputed testimony, I find that the Tenant was deemed served with Notice of this participatory hearing June 25, 2020, three days after the email was sent and three days after the hearing package was posted to her door (pursuant to section 90 of the *Act*).

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's Agent's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

#### Issue to be Decided

Is the Landlord entitled to an early end to tenancy pursuant to section 56 of the *Act*?

#### Background and Evidence

The Landlord's Agent testified that this tenancy began in June of 2013. He confirmed the tenancy agreement is oral as there is no written tenancy agreement between the parties.

As noted, the Agent testified that due to the Landlord's cognitive issues the Landlord's Agent has power of attorney over the Landlord's affairs.

The Landlord's Agent testified that the reason he seeks an early end to this tenancy is that the Tenant built a large garden on the rental property, without the Landlord's consent, and has "basically taken over the property". He stated that when he has tried to address this with the Tenant, she has either ignored him or called the police. He further stated that the Tenant is denying him access to the rental property.

### Analysis

The Landlord seeks an early end to tenancy pursuant to section 56 of the *Act*; in such cases, the tenancy may only be ended early if the Landlord provides sufficient evidence to prove, on a balance of probabilities, that the Tenant has:

- *significantly* interfered with the Landlord or another occupant of the residential property;
- *seriously* jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
- put the Landlord's property at *significant* risk;
- engaged in *illegal* activity that
  - has damaged or is likely to damage the Landlord's property,
  - has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
  - has jeopardized a lawful right of another occupant or the Landlord; or
- caused *extraordinary damage* to the residential property

*and* it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect. As such, the Landlord must not only prove the reasons for ending the tenancy but also that there is urgency to the request.

In this case, the evidence before me is that the Tenant had built a garden on the rental property. The Landlord's Agent testified that she did so without permission and has "basically taken over the yard". He also stated that the Tenant ignores his communication and requests and has refused him entry to the property as well as calling the police on him.

I am satisfied, based on the evidence before me that the Landlord's Agent is responsible for managing the rental property and is the Landlord as defined by section 1 of the *Act* which provides in part as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

The Tenant is cautioned that she may not refuse the Landlord's Agent's entry to the rental property provided that such entry complies with section 29 of the *Act*. Further, she is cautioned that communication relating to the tenancy should be directed to the Landlord's Agent as power of attorney over the Landlord, E.M.

In this case, the evidence indicates this is a problematic tenancy which is becoming more conflictual and began when the Tenant built a large garden on the property without the Landlord's consent.

*Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant – Responsibility for Residential Premises* provides in part as follows:

#### **PROPERTY MAINTENANCE**

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

While the construction of the garden may give rise to an end of this tenancy for cause pursuant to section 47 of the *Act*, I find the Landlord has failed to meet the burden of providing that this tenancy should end *early* pursuant to section 56. As noted, section 56 requires a finding of some urgency, and in this case I find the Landlord has failed to meet the burden of showing it would be unreasonable or unfair for the Landlord to wait for a 1 Month Notice to End Tenancy for Cause to take effect. The Landlord may issue such a notice for the reasons giving rise to this Application, however, the Landlord's Application for an *early* end to tenancy pursuant to section 56 is dismissed.

Conclusion

The Landlord's Application for an early end to tenancy is dismissed.

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: July 14, 2020

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Residential Tenancy Branch