



# 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 landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, the tenant's proper name was confirmed as her surname was duplicated in the landlord's application.. As it was not disputed, the tenant's name was amended to reflect the tenant's proper name.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

### **Issues(s) to be Decided**

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 24, 2018, with monthly rent currently set at \$2,475.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,237.50, which the landlord still holds.

The landlord is seeking an early end to this tenancy. The landlord testified that the tenant has sublet without the landlord's permission. The landlord testified that a fire took place in March, caused by a cigarette falling onto a mattress. The landlord is concerned that the tenant has allowed unauthorized occupants to reside in the rental unit, and these occupants or guests have caused significant damage to the rental unit. The landlord testified that he has not been able to access the rental unit to assess the damage, and perform any repairs. The landlord provided photos of two notices posted on the tenant's door in May of 2020 to allow the landlord access to enter and inspect the rental unit. The landlord testified that the tenant had changed the locks to prevent his access. The landlord testified that when he attempted to speak to the tenant, she spat at him. The landlord testified that he feels threatened by the tenant. The landlord included statements, as well as photos of damage to the home. The landlord believes that the tenant and her guests continue to put the landlord, other tenants, and the landlord's property at significant risk.

The tenant's advocate testified in the hearing that the tenant is normally a very pleasant person, but suffers from a condition where she becomes extremely emotional when triggered. The advocate stated that when the tenant feels attacked, she feels the need to defend herself. The tenant's advocate testified that she was reacting to the landlord, who antagonized her. The tenant disputes spitting on the landlord.

The tenant does not dispute that a fire took place on March 5, 2020, around 3:00 to 4:00 a.m., but testified that the fire was a localized fire that did not cause any damage to the suite.

### **Analysis**

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of 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 of the *Act*, I need to be satisfied that the tenants have done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*

- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair for the landlord to wait until an application to end the tenancy for cause was considered. At the time of the hearing, I find that the landlord has not issued the tenant any 1 Month Notices to End Tenancy for Cause. As there was a Ministerial Order in effect that prohibited the landlord from issuing a Notice to End Tenancy under section 47 of the *Act* during the period of March 30, 2020 to June 23, 2020, I must consider whether the landlord has satisfied the requirements for the end of a tenancy under section 56 of the *Act*. I note that a new order was issued on June 24, 2020 that rescinded the order dated March 30, 2020, and a landlord may now issue a 1 Month Notice for matters unrelated to unpaid or late payments of rent.

In this case, I find that the landlord's application falls well short of the requirements outlined in section 56 of the *Act*. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair.

Although the landlord provided personal and witness statements about the tenant's behaviour, the tenant provided contradictory evidence that the landlord had initiated or contributed to the disputes that took place. Although I accept the landlord's testimony, and the statements provided, which support that the tenant had engaged in behavior

that could be viewed as disturbing or aggressive, I find that the tenant's condition makes her susceptible to reacting in situations where she feels attacked. I find that the landlord has engaged in behaviour that has caused the tenant to feel threatened such as the landlord's contravention of the Ministerial Order in place since March of 2020. I find that the landlord had attempted to enter the tenant's rental unit during a period when restrictions prevented the landlord from entering the tenant's rental unit. I am not satisfied that the entry was necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public, nor am I satisfied that the entry was related to an emergency in relation to the COVID-19 pandemic, as required by the Ministerial Order in place at the time as set out below:

The Ministerial Order dated March 30, 2020 set the following restrictions on the landlord's right to entry:

***Landlord's right to enter rental unit – Residential Tenancy Act***

*8 (1) Despite section 29 (1) (b) of the Residential Tenancy Act and sections 11 (2) (a) and (3) of the Schedule to the Residential Tenancy Regulation, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.*

*(2) If a landlord gave written notice under section 29 (1) (b) of the Residential Tenancy Act before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.*

*(3) Despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:*

- (a) an emergency in relation to the COVID-19 pandemic exists, and*
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.*

Although the landlord provided evidence of damage to the property, I am not satisfied that the landlord provided sufficient evidence to support that the damage was caused by the tenant. I find that the fire was abated, and although the landlord submits that there was resulting damage, I am not satisfied that the landlord had provided sufficient evidence to support that the fire had caused damage to any portion of the home.

In light of the evidence before me, I am not satisfied that the landlord provided sufficient evidence to support that the behaviour of the tenant is significant or serious enough to

justify the early end of this tenancy under section 56 of the *Act*. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in this application, the landlord must bear the cost of this filing fee. The landlord's application for recovery of the filing fee is dismissed without leave to reapply.

### **Conclusion**

I dismiss the landlord's entire application without leave to reapply. 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: July 20, 2020

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Residential Tenancy Branch