



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

In this dispute, the landlord seeks an order ending the tenancy, and an order of possession, pursuant to section 56 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on June 29, 2020 and a dispute resolution hearing was held on July 21, 2020. The landlord and tenant attended the hearing, and they were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue of this application.

### Preliminary Issue: Tenant’s Service of Evidence

The landlord stated that he was only served with the tenant’s evidence on the morning of Sunday, July 19, 2020, and that the tenant “served” the landlord by leaving the evidence on the washing machine, which all parties have access to.

Pursuant to Rule 10.5 of the *Rules of Procedure*, under the Act, a respondent must serve the applicant “as soon as possible and at least two days before the hearing.” I find that the tenant served the landlord within the required timeline.

Section 88 of the Act prescribes the various methods by which evidence may be served. Leaving a copy of the evidence on the top of a washing machine – even if that washing machine is accessed by the landlord – is not a normal or permitted method of service. On this point, then, I find that the tenant did not serve the landlord in compliance with the Act. That having been said, the landlord did acknowledge receiving the evidence, and as such the evidence will be admitted and considered.

## Issue

Is the landlord entitled to an order ending the tenancy, and an order of possession, pursuant to section 56 of the Act?

## Background and Evidence

The landlord testified at length regarding the tenant's conduct which he described as "a lot of harassment" and "mental torture." The conduct amounts to confrontations and bullying, and the landlord is purportedly on medication to deal with the anxiety and stress of dealing with the tenant. If the issues continue, the landlord's oldest son, a 9-year-old, may need to seek counselling. The landlord testified that he feels bullied, and his two children are worried for his health. They commented about their father getting a heart attack. The sons no longer play in the backyard of the property, and that they are "afraid of the tenant."

"Every time he needs something, he keeps at me," the landlord testified. He understands that, as a landlord, he is obligated to answer a tenant's requests for assistance, but it becomes a lengthy and stressful exchange. And, he testified that the tenant will often text him late at night unnecessarily. A lengthy litany of text messages between the parties was submitted into evidence by both parties.

The landlord also gave evidence about the tenant storing some of his property in the backyard where is not supposed to.

In summary, the landlord testified that the tenant's conduct is affecting his mental health and that he needs the tenancy to end.

The tenant testified that he is thankful for the landlord giving him a place to live. Unfortunately, the tenant explained that the landlord "has made life so complex," and that anytime the tenant asks for something the landlord tries to turn the responsibility back on the tenant.

The tenant explained that he will not hesitate to ask the landlord for facilities or services that he believes he is entitled to. Whenever they do talk, the landlord becomes hypertense and full of anxiety. On that, the tenant opined that the landlord's two children will probably not fully understand the conversation and will hear the loud voices and become worried.

Both parties spoke about issues with a fire alarm, and with the fire department attending. And, both parties spoke about issues involving laundry machine use.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 56(1) of the Act permits a landlord to 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, and (b) granting the landlord an order of possession in respect of the rental unit.

In order for me to grant an order under section 56 (1), I must be satisfied that

- (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.

In this case, I do not find that there is sufficient evidence for me to grant an order to the landlord under section 56 of the Act. While there is undoubtedly a communication issue between the landlord and the tenant, nowhere in the landlord's evidence did I find conduct or actions by the tenant that met what I consider to be a significant interference, or an unreasonable disturbance, giving rise to the landlord being entitled to an order under this section.

That having been said, late night texts cannot be condoned, and I would caution the tenant that, unless there is a true emergency, he ought to communicate with the landlord during normal daylight hours. And, he ought to minimize his communication with the landlord where at all possible. Both parties appeared to be reasonable gentlemen, and I encourage them to seek a reasonable middle-ground in all communication going forward.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving his application for an order under section 56 of the Act. Therefore, I dismiss the landlord's application without leave to reapply.

### Conclusion

I hereby dismiss the landlord's application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 21, 2020

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Residential Tenancy Branch