



# 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 by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 03, 2020 (the “Application”). The Landlord applied for an order ending the tenancy early based on section 56 of the *Residential Tenancy Act* (the “Act”). The Landlord also sought reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord who did not have questions in this regard. The Landlord provided affirmed testimony.

The Landlord advised that he thinks the Tenant might have abandoned the rental unit; however, the Landlord continued to seek an Order of Possession for the rental unit.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and evidence were posted to the door of the rental unit July 06, 2020. The Landlord submitted a Proof of Service signed by a witness confirming this. The Landlord also submitted a photo of this.

Based on the undisputed testimony of the Landlord, Proof of Service and photo, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the package July 09, 2020. I also find the Landlord complied with rule 10.3 of the Rules of Procedure (the “Rules”) in relation to the timing of service.

I acknowledge that the Landlord believes the Tenant has abandoned the rental unit. However, the Landlord testified that the Tenant never gave proper notice ending the tenancy and did not return the keys. Therefore, I am satisfied the Tenant remains in possession of the rental unit and am satisfied the Landlord can serve the Tenant at the rental unit.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

The first page of a written tenancy agreement between the parties was submitted as evidence. The Landlord testified as follows. The tenancy started January 24, 2020 and is a month-to-month tenancy. Rent is \$1,550.00 per month due on the first day of each month. The Tenant did not pay a security or pet damage deposit.

The Landlord testified as follows in relation to the basis for the Application. The Tenant failed to pay rent for months. The parties discussed whether the Tenant was going to stay or vacate. The Tenant indicated she would be vacating but then did not do so. The Tenant subsequently told him someone would be cleaning the house and she would vacate by July. He attended the rental unit and found it in the condition shown in the photos. There was garbage, the rental unit was a mess and the yard was unkept. He sent the Tenant a text about the keys and cleaning, but the Tenant did not respond. The Tenant never gave proper notice of ending the tenancy. He does not know if the Tenant is going to return to the rental unit. He wants possession of the rental unit so he can clean it up.

I outlined the two-part test set out in section 56 of the *Act* and asked the Landlord to address these points. The Landlord further testified as follows.

In relation to the first part of the test, there is risk from the amount of debris and garbage built up inside and outside of the rental unit. The rental unit is not fit for habitation. There is mold developing as well as infestation from rodents and insects. The rental unit is in a duplex, so these issues put the neighbour at risk as well. He is worried that the rental unit is not safe from a health stand point. He does not want to see this spread to the other side of the duplex.

In relation to the second part of the test, at this point, due to the extent of accumulation of debris, garbage and mold, waiting for another month will allow for the infestation and mold to grow. He is worried he might have to have someone attend with a full biohazard suit to clean the rental unit up. The garbage will continue to leach into the building meaning the floors would have to be re-done and the septic system would continue to sustain damage.

### Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;
4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlord, as applicant, has the onus to prove the circumstances meet this two-part test.

The evidence submitted by the Landlord includes three photos of inside the rental unit. The photos do not support that the state of the rental unit poses an urgent situation. The photos show that two areas inside the rental unit are messy and not particularly clean and a third area has four garbage bags in it. I do note that two of the photos include garbage bags in them in two separate areas of the rental unit. However, the photos do not show that the mess is damaging the rental unit in some way or posing some risk.

The photos do not show the outside of the rental unit or that it is unkept.

The photos do not support that the situation is so serious that the rental unit is not fit for habitation. The photos show the rental unit needs to be cleaned up.

The photos do not show mold. There is no other documentary evidence before me to support the testimony that mold is growing in the rental unit.

The photos do not show an infestation of rodents or insects. There is no other documentary evidence before me to support the testimony that there is an infestation of rodents or insects.

The photos do not support that the rental unit poses a health hazard. There is no other documentary evidence before me to support the testimony that the rental unit poses a health hazard.

The photos do show garbage bags in the rental unit. The photos do not show what is in the garbage bags pictured. I note that one of the photos shows cardboard around and coming out of the garbage bags which suggests they might contain recycling. There is no documentary evidence before me to support the testimony that garbage is leaching into the building, damaging floors or damaging the septic system.

The state of the rental unit as shown in the photos is something that can be dealt with through notices to the Tenant or a One Month Notice. The photos do not depict a serious situation.

Usually, issues such as garbage, mess, an unkept yard, debris, mold and infestations are issues that should be dealt with through notices to a tenant and a One Month

Notice. There may be circumstances where these issues amount to an urgent situation. However, I would expect to see compelling evidence that the state of the rental unit is such that it would be unfair or unreasonable to require the landlord to wait for a One Month Notice to take effect.

Here, there is no such compelling evidence as the photos do not support the issues raised. If the issues raised were serious and urgent issues, I would expect them to be reflected in the photos the Landlord took and submitted for this hearing or would expect the Landlord to have obtained other documentary evidence to support his position such as assessments, reports or witness statements. I do not find the Landlord's testimony sufficient given the issues raised are usually ones that should be dealt with through a One Month Notice and given the photos do not support the testimony. Given the lack of compelling evidence showing that the state of the rental unit poses a serious and urgent situation, I am not satisfied it does.

I am not satisfied the Landlord has shown that the circumstances meet the two-part test set out in section 56 of the *Act*. Therefore, the Landlord is not entitled to an Order of Possession pursuant to section 56 of the *Act*.

Given the Landlord was not successful, I decline to award the Landlord reimbursement for the \$100.00 filing fee.

### Conclusion

The Application is dismissed without leave to re-apply.

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*.

Dated: July 24, 2020

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Residential Tenancy Branch