



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

On July 2, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord and the Tenant attended the hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenant with the Notice of Hearing package by registered mail on July 13, 2020. The Tenant confirmed that he received this package; however, he did not know when he received it, nor did he have any issues with service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing package.

She also advised that she served her evidence to the Tenant on July 2, 2020 by posting it to the Tenant’s door with a witness. The Tenant confirmed that he received this evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by registered mail on July 23, 2020 but the Landlord stated that she had not received this evidence. As per Rule 10.5 of the Rules of Procedure, this evidence must be served to the Landlord at least two days prior to the hearing. As this was served by registered mail on July 23, 2020, as Section 90 of the *Act* indicates that documents served by registered mail are deemed received after five days, and as the Landlord has not received this evidence, I

have excluded the Tenant's evidence and it will not be considered when rendering this Decision. The Tenant was permitted to speak to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2019, that rent was currently established at \$1,550.00 per month, and that it was due on the first day of each month. A security deposit of \$775.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord was unable to clearly outline the bases for this Application; however, she was eventually able to isolate her claims into three issues. For the first issue, she stated that she sent an email to the Tenant on April 26, 2020 warning him that the strata would fine residents who may be smoking in the respective units. She then received an email from the strata on May 24, 2020 which indicated that the Tenant had been smoking on the deck and continues to smoke in his bedroom, despite being warned not to. These documents were submitted as documentary evidence.

She stated that she told the Tenant that the rental unit was a non-smoking unit, but she did not indicate if she had written a no smoking clause into the tenancy agreement. Furthermore, she stated that the strata by-laws prohibit smoking in the wood building; however, she did not advise if the Tenant had been provided with a Form K or a copy of

the strata bylaws at the start of the tenancy. She noted that she conducted an inspection of the rental unit one day and she could smell smoke. As well, she stated that the strata “wants him out.” Finally, she submitted that a neighbour sold their property due to the Tenant’s smoking, and that there is a possibility that the Tenant might fall asleep and accidentally burn down the building.

Secondly, she advised that the residents of the building are scared because of his behaviour, and she stated that he scares the seniors in the building. She referred to the email dated May 24, 2020 from the strata, which indicated that the Tenant would walk around the property after midnight, wearing a wool hat in the summer, scaring the seniors. However, she could not specifically advise of what he would be doing to scare them.

In this email, it also made reference to an incident that happened on November 8, 2019 where the police were called because the Tenant had assaulted a female guest. She stated that she was informed of this incident, but she took no corrective action because the Tenant assured her that nothing would happen in the future.

She then spoke of an incident on May 23, 2020 where the Tenant called her at 5:28 AM. She stated that he was erratic and non-sensical. Fearing for his safety, she sent the property managers to conduct a welfare check; however, he would not open the door. As a result, they called the police and when they entered, the police found drugs. They also took the Tenant away to a hospital for psychiatric evaluation.

Thirdly, she advised that the Tenant “apparently owns a gun”; however, she did not have any evidence to support this allegation. She stated that the police had been advised during the November 2019 incident that the Tenant may have a gun, but nothing was done about this. She then stated that the police were advised that the Tenant may have a gun prior to when they entered the rental unit for a welfare check on May 23, 2020. However, she claimed that there was no indication of any firearms being found because the police “were not looking for a gun because they did not have a search warrant.” She confirmed that she does not know if the Tenant has a gun or not.

The Tenant advised that he does not smoke in the rental unit and there is no evidence provided by the Landlord to support this. He stated that he goes outside to smoke. He stated that he has never received any complaints of any smoking issues and that he has never received a fine for smoking in the rental unit. He read from two witness letters that reiterated that he has not been observed smoking in the rental unit.

Regarding the issue of him scaring seniors, he advised that because of the rain, he puts on a toque when he goes outside to smoke. He has done nothing to scare any seniors in the building and the Landlord's allegations are mere gossip. He read from a witness letter of his care-aid worker who confirmed that she has never witnessed him scaring anyone. He stated that she spends "maybe" 10 hours a week with him.

Finally, he confirmed that he had an incident with his ex-girlfriend in November 2019 where she accused him of having a gun. He advised that he has never been in possession of a firearm, that this issue was before a judge already, that no charges were laid against him, and that he was not found to have engaged in any criminal activity.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant has 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.*

When reviewing the totality of the evidence before me, I understand the concerns of the Landlord; however, I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regarding the Landlord's submissions on the Tenant smoking in the rental unit, while there is one email dated May 24, 2020 stating that the Tenant has been smoking on the balcony, the Landlord has not provided any other evidence to support that this is happening. Furthermore, the Landlord has only provided speculation that if the Tenant is smoking in the rental unit, that there is a possibility that the building may be burned down. Finally, the Landlord has not provided any evidence to demonstrate that if the Tenant is smoking in the rental unit, that this is causing significant health issues to other residents. Based on what has been presented, I find that the Landlord has not provided any compelling or persuasive evidence to satisfy the elevated threshold of granting an early end of tenancy on this issue.

With respect to the Landlord's submission on the Tenant's behaviour, while there is the email dated May 24, 2020 which indicates that other residents are scared by the Tenant walking around at night wearing a wool hat, and while I understand that they might feel scared by what they observe to be unusual, I do not find that the Landlord has submitted any evidence to demonstrate what the Tenant was specifically doing to scare these residents, allegedly. I find this to be a weak argument by the Landlord as there is no compelling or persuasive evidence before me to support the position that these residents were directly threatened.

She also made reference to an incident in November 2019; however, she elected not to take any action with respect to that situation at the time. Finally, she spoke of an erratic phone call that she received on May 23, 2020 from the Tenant. While this phone call may have been unusual, and I have no doubts that the Landlord may have felt uncomfortable by this, she has provided insufficient evidence to support how the bizarre subjects that he spoke of during this conversation would meet the grounds for ending the tenancy early.

Moreover, while I infer from the Landlord's evidence that she is alluding to the Tenant possibly suffering from a mental health issue, even though his behaviour might be

unsettling, I note that she has not submitted any evidence to substantiate that there has been a diagnosis of a mental health disorder, nor has there been any evidence provided that even if the Tenant did suffer from a mental health disorder, how this would constitute a ground to end the tenancy under this type of Application.

Finally, she advised that it was her belief that the Tenant may own a gun, but she had insufficient evidence to verify this allegation. I find it important to note that she stated that the police were informed that the Tenant may have a firearm during the November 2019 and May 23, 2020 incidents; however, there was no evidence that a gun was ever found on either occasion. While she stated that this was because the police were not looking for one, I am highly dubious that if the police were advised that an individual may be armed, that they would not investigate the nature of this allegation and simply not search for one. I find this to be a nonsensical and wholly unlikely statement from the Landlord.

Given that there was some mention by the Tenant's ex-girlfriend that he may have had a firearm, I understand the Landlord's concern. However, due to the serious nature of this allegation, I find it more likely than not that the police would have investigated this. As there is no evidence that a gun was discovered, I find the Landlord's assertion to be entirely unfounded, and I am not satisfied that the Landlord's unproven conjecture would justify an early end of tenancy.

As the onus is on the Landlord to prove her claims, even though I acknowledge that she is likely uncomfortable and disturbed by the Tenant's behaviours and actions to date, under the circumstances described, I find that she has provided scant evidence to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlord is not entitled to an Order of Possession and I dismiss this Application in its entirety. It is possible though, that the Tenant has been engaging in actions and behaviours that are aggravating factors that support the formation of the basis to attempt to end the tenancy using a One Month Notice to End Tenancy for Cause.

As the Landlord was not successful in this claim, I find that she is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, I dismiss the Landlord's Application without leave to reapply.

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 29, 2020

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Residential Tenancy Branch