



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 249 E. Georgia Street Holdings  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for an early end of the tenancy and an Order for possession - Section 56;
2. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Materials”) in person on July 10, 2020 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord provided entitled to end the tenancy early?

### Background and Evidence

The tenancy under written agreement started on August 1, 2019. Rent of \$500.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$250.00 and a fob deposit of \$50.00.

The Tenant has been making loud noise and banging on the walls of the unit prompting complaints from other tenants. The Landlord has issued two past notices to end

tenancy for cause, the last being issued on January 23, 2020 with an effective date of February 29, 2020. The Landlord cancelled the first one month notice and although the Tenant did not dispute the second one month notice the Landlord did not seek an order of possession based on this notice as the Landlord was trying hard not to evict the Tenant. The tenant beside the dispute unit moved out of the unit because of the noise. The Landlord makes this application for an early end of the tenancy and did not seek to issue another notice to end tenancy for cause as the Landlord thought the second notice to end tenancy for cause would be sufficient to end the tenancy early. The Landlords supporting evidence of the noise and complaints, including video evidence of the noise, is from 2019. There is no supporting evidence that another tenant moved out of the unit due to the noise or due to any recent severe and immediate risk.

### Analysis

Section 56(2) of the Act provides that the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(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.

Given that the Landlord did not act on the last notice to end tenancy for cause I find that the evidence of disturbance leading up to that notice is not sufficient to now substantiate any immediate and severe risk to anyone or anything. The only evidence of why the Landlord could not wait for a notice to take effect is that the Landlord thought it could rely on this past notice however the Landlord has not made a claim for an order of possession based on this notice and has instead sought an expedited and exceptional remedy under section 56 of the Act. This past notice is not evidence of any immediate and severe risk and there is no other evidence of an immediate and severe risk such that the Landlord could not wait for a one month notice to end tenancy for cause or could not have sought an order of possession based on the last undisputed notice to end tenancy for cause. For these reasons I find that the Landlord has not provided sufficient evidence to end the tenancy early. The Landlord is therefore not entitled to an early end of the tenancy and I dismiss the application.

### Conclusion

The application 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 Act.

Dated: August 14, 2020

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Residential Tenancy Branch