



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with the landlords' application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end of the tenancy and Order of Possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenant testified that they received the landlord's application and materials and that they had not served any evidence. Based on the testimonies I find that the tenant was duly served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

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

### Background and Evidence

This tenancy began in May 2010. The current monthly rent is \$941.00 payable on the first of each month. The rental unit is a suite in a detached home with the landlord occupying the other portion of the property.

The landlord submits that the primary reason to end this tenancy is that the tenants smoke in the rental building and that causes disturbance and negative health effects on the landlord's family and guests. The landlord testified that the smoking has been an ongoing issue since the tenancy began and that they have issued 6 separate written

warnings to cease smoking. The landlord submitted witness statements from a family member and a guest who both attest to the fact that the tenants smoke in the rental building and therefore they are unable to reside there.

The landlord also submits that the tenants have not paid the full rent over the course of the past several years. The landlord submitted into evidence a spreadsheet showing the late payments and rental arrears.

The landlord also submitted into evidence photographs of a figure with a crossbow and writes, "Possible attempt at intimidation?" The landlord did not give any testimony on this point.

### 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 for a landlord's notice for cause.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution.

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.

I find that the landlord has provided insufficient evidence to show that there is a basis for an early end of this tenancy. I find that smoking on the property may be behaviour that the landlord and their family finds unpleasant but not behaviour that is characterized as a significant interference or unreasonable disturbance. The landlord gave evidence that the smoking has been an ongoing concern since the tenancy began over a decade ago. I find the landlord's evidence of the negative effects of smoking on potential houseguests and family members to be insufficient to establish that there is a serious jeopardy to health or safety. The act may be a nuisance and annoying but I find insufficient evidence that mere act of smoking on the property, near the landlord and their family can be considered significant or unreasonable.

I note that the landlord suggests in their written submissions that the smoking is also a fire hazard but I find insufficient evidence that this is a real concern based on unreasonable conduct on the part of the tenants.

I find that the other issues the landlord cites including the repeated late payment of rent and an instance where a guest had a crossbow to not form the basis for an early end of the tenancy. Late payment of rent is irrelevant for an application for an early end of the tenancy which requires a significant and serious breach. Similarly, I find the simple act of carrying or using a crossbow does not constitute a serious jeopardy to other occupants.

Based on the totality of the submissions I find that the landlord has not met their evidentiary onus to show that the conduct of the tenants has given rise to a basis for an early end of this tenancy. The landlord's complaints do not, individually or cumulatively, amount to a significant or unreasonable disturbance and I find insufficient evidence that it is unreasonable or unfair to the landlord or others to wait for a notice under section 47 of the Act to take effect. Consequently, I dismiss the landlords' application in its entirety.

Conclusion

The landlords' application is dismissed in its entirety 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: August 6, 2020

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Residential Tenancy Branch