



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords and the Tenant, all of whom provided affirmed testimony. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

The Landlords submitted several documents to the Residential Tenancy Branch (the “Branch”) after filing their Application, contrary to rule 10.2 of the Rules of Procedure, as this was an expedited Application. In the hearing the Landlords stated that the majority of this late evidence relates to a One Month Notice to End Tenancy for Cause, which is

the subject of another Application for Dispute Resolution; However, they argued that a document titled "Appendix B" and an email from the restoration company are new and relevant evidence related to this Application and should therefore be accepted for consideration.

Having reviewed this evidence I agree that it is both new and relevant to the Application, in that it relates to the Landlords claim that the Tenant seriously jeopardized their lawful right under the *Act* to complete repairs, and engaged in illegal activity that has or is likely to cause damage to their property, and has jeopardized or is likely to jeopardize their lawful right or interest in the property, and did not exist until after the Application was filed due to no fault or lack of due diligence on the part of the Landlords. As a result, I accept it for consideration in this matter. As the Tenant agreed that they received this evidence 4-5 days before the hearing, I find that no adjournment is necessary to allow the Tenant further time to review and consider it.

The remainder of the evidence submitted to the Branch by the Landlords after the Application was filed is excluded from consideration, with the exception of written submissions which in my mind are not evidence under the *Act* or the Rules of Procedure, as I find that it either existed prior to the date the Application was filed, or could reasonably have been obtained and submitted to the Branch with the Application, if the Landlords had acted diligently.

As the Landlords acknowledged receipt of the Tenant's documentary evidence at least two days prior to the date of the hearing, which is the timeline set out under rule 10.5 of the Rules of Procedure, I therefore accepted the Tenant's documentary evidence for consideration.

#### Issue(s) to be Decided

Are the Landlords entitled to end the tenancy early pursuant to section 56 of the *Act*?

Are the Landlords entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

#### Background and Evidence

There was no disagreement that several leaks occurred in the Tenants rental unit, which the Tenant is not at fault for. However, the Landlords argued that the Tenant significantly interfered with the Landlords' ability to mitigate the damage to the rental unit caused by the leaks by intentionally turning off equipment such as dehumidifiers

and industrial fans placed in the rental unit by the restoration company hired by their insurance provider, despite repeated direction from themselves and the restoration company to leave these items running, which placed the property at significant risk of mould growth and further damage.

The Landlords also stated that the Tenant committed a criminal code offense when they called the restoration company pretending to be one of the Landlords, in an effort to obtain confidential information about the insurance claim and to take control of the restoration and repair work. As a result, the Landlords stated that the Tenant seriously jeopardized their lawful right under the *Act* to complete repairs and engaged in illegal activity that has or is likely to cause damage to their property and has jeopardized or is likely to jeopardize their lawful right or interest in the property.

The Landlords stated that on July 10, 2020, at 5:08 P.M. they received a text message from an employee with the restoration company asking if they had called, which they had not, as someone had called their office alleging to be the Landlord T.R. Although a copy of the text message was not provided for my review, the Landlords reproduced what they state were the contents of this text message in Appendix B.

Although the Landlords acknowledged that the rental unit is now dry and that the fans and dehumidifiers were removed by the restoration company on July 5, 2020, they stated that they are still seeking to end the tenancy under section 56 as further repairs are required to the rental unit, they are concerned about their ability to have these repairs completed given the Tenant's behavior and believe that the Tenant has no intention of allowing the Landlords to have the repairs completed as required without significant interference.

Although the Tenant acknowledged that they turned off the equipment placed in their rental unit several times, they stated that the Landlords have significantly exaggerated the severity of the leaks as well as the duration and frequency of the times the equipment was off. Further to this, the Tenant stated that they were advised by the restoration company that they could turn the equipment off to sleep, as it was exceptionally loud, and the Tenant suffers from a serious medical condition for which they are undergoing treatment.

The Tenant stated that although the Landlords have presented this as an emergency situation, this is not the case, as several days lapsed between when the leaks occurred and when the restoration company came for an inspection, as well as between the date of the inspection and the date fans and dehumidifiers were delivered. While the tenant

acknowledged that they want to be consulted about the repairs and to have the Landlords schedule repairs in a way that works for them and is compliant with COVID safety precautions due to their compromised immune system, they denied any intention to entirely prevent repairs, stating that the rental unit is their home and doing so would be contrary to their own best interests.

Both parties submitted documentary evidence in support of their testimony including but not limited to written summaries and submissions, copies of emails and text messages, hotel receipts, photographs, a copy of a letter to the Tenant dated July 3, 2020, medical documentation, and general information from the local health authority regarding COVID-19 precautions.

### Analysis

Although the Landlords argued that the Tenant has no intention of complying with the repairs still needed, and is therefore seriously jeopardizing the lawful right or interest of the Landlords and putting the Landlord's property at significant risk, I am not satisfied based on the documentary evidence and testimony before me that there is any merit to this claim. However, the Tenant should be aware that pursuant to section 32 of the *Act*, the Landlord is obligated to repair and maintain the property and that the Landlords, their agents, or persons hired by them may enter the rental unit for the purpose of completing any required maintenance and repairs without the Tenant's presence, agreement, or consent, provided the Landlords comply with the requirements set out under section 29 of the *Act*. The Tenant should also be aware that preventing lawful access to the rental unit by the Landlords, their agents, or persons hired by them to complete repairs may constitute grounds to end the tenancy under either section 47 or section 56 of the *Act*. The Landlords should similarly be aware that entering the rental unit or permitting entry to the rental unit by their agents or persons hired by them to do repairs, in breach of section 29 of the *Act*, may give rise to an Application for Dispute Resolution on the part of the Tenant seeking compensation for loss and/or an Order restricting or setting conditions on the Landlords' right to enter the rental unit.

Although the Landlords stated that the Tenant engaged in illegal activity by impersonating T.R. in communications with the restoration company, I find the documentary evidence submitted by them in this regard falls significantly short of establishing that any illegal activity occurred on the part of the Tenant or that this activity, if it in fact occurred, seriously jeopardized their lawful right or interest in the property or has or is likely to cause damage to their property. Although the Landlords reproduced what they state is an accurate representation of a text received from the

rental company regarding this activity by the Tenant in Appendix B, the actual text message was not provided for my consideration. As a result, I am not satisfied that Appendix B is an accurate and reliable source of evidence in this regard as it was authored by the Landlords themselves who have a vested interest in the outcome of the hearing. Further to this, although a copy of an email from the contractor to the Landlords was submitted for my consideration on this issue, the email states only that a phone call was received at the company's office from the Tenant's phone number, that the person did not deny being the Landlord T.R. when asked, and that the caller wished to receive a call back.

There is no indication in the email that the Tenant explicitly stated that they were T.R., that they attempted to obtain confidential insurance claim information or to take control of scheduled repair and maintenance work in the rental unit as alleged by the Landlords, or that any confidential information was ever disclosed. As a result, I dismiss the Landlord's claim that the tenancy should be ended under sections 56 (2) (a) (iv) (a) or (c) of the *Act* due to impersonating the Landlord T.R., without leave to reapply.

While I acknowledge that the Tenant turned off the fans and dehumidifiers on several occasions, the parties disputed the frequency and duration of these disconnections and whether the Tenant was permitted to periodically turn this equipment off by the restoration company. Further to this, the Landlords acknowledged in the hearing that the rental unit is now dry and that the fans and dehumidifiers were removed July 5, 2020. As a result, I am not satisfied that any risk posed to the property or other occupants by the Tenant's disconnection of this equipment necessitates an end to the tenancy under section 56 of the *Act*, as any immediate risk to the property which may have existed as a result of these disconnections, has passed. I therefore find that it is not unreasonable or unfair to the Landlord or other occupants of the property to wait for a notice to end tenancy under section 47 to take effect, should the Landlord wish to seek an end to the tenancy for this purpose.

Based on the above, I therefore dismiss the Landlord's Application seeking to end the tenancy early pursuant to section 56 of the *Act*, without leave to reapply. As the Landlord's Application was dismissed, I decline to grant recovery of the filing fee.

### Conclusion

The Landlord's 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 12, 2020

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Residential Tenancy Branch