



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

The landlord filed an Application for Dispute Resolution on September 3, 2020 seeking an order to end the tenancy on the basis that the tenant poses an immediate and severe risk to the property, other occupants or the landlord. The matter proceeded by way of a conference call hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 18, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not. After taking an oath from the landlord, I gave them the opportunity to speak to the issue.

The landlord stated that they delivered notice of this dispute resolution to each of the two tenants as part of a package that was attached to the door of the rental unit. This occurred on September 9 at 932 pm. They stated that they took this measure of service because the tenants did not answer the door for face-to-face dialogue. The packages included the evidence that the landlord prepared for this hearing. The landlord provided a ‘Proof of Service’ document that has the name of a witness who signed to state that they witnessed this transaction at the rental unit.

From what the landlord presents here on notifying the tenant of this hearing, I am satisfied they served the tenant notice of this hearing in a method prescribed by the *Act*.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession that ends the tenancy for cause and without notice by section 56 of the *Act*?

### Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section. That is, I consider only material that is relevant to the landlord's application for an early end of the tenancy for cause.

The landlord confirmed the details of the tenancy agreement they provided as evidence for this hearing. The start date was June 1, 2020. The tenants pay \$2,600.00 per month on the first day of each month. A security deposit of \$1,300.00 was paid on May 12, 2020.

The landlord provided documentary evidence to show how the conduct of the tenants is reason to end the tenancy in an expedited fashion. This is communication with a city by-law enforcement officer concerning the prohibition of a property owner "from allowing a property to become unsightly". Additionally, on August 26 the officer informed the landlord that they received "two complaints from the neighbourhood two weeks ago. . . advising that there were . . . concerns [that] have been forwarded to the COVID enforcement team." The landlord responded to advise they were currently in the process of evicting the tenants. The landlord also provided two photos showing the state of the outside area on the property.

In a written statement, the landlord provided that the tenants "are organizing large parties almost every second day during the Covid-19 restrictions." Local residents called the police "numerous times" to disperse the parties. Additionally, the tenants have a pet that "keeps howling the entire day." The landlord also listed an issue of unpaid rent and utilities.

The landlord expanded on details in the hearing. Their estimate was "18 or 19 young kids" attending a party within the first week of the tenancy, and police have made 8 or 9 visits for parties that last until 1 or 2 in the morning. The landlord counts the number of people living in the unit to be 16 or 17 in mid-August.

The landlord reiterated that their concerns begin once the police or by-law enforcement officers become involved. With this being an ongoing issue, it could potentially result the city imposing a fine, particularly where they are continuing to give notices to the landlord.

The landlord confirmed there were no positive diagnosed cases of COVID present that were identified with health officers or by-law enforcement officers.

The landlord also identified that they did serve a notice to end tenancy for unpaid utilities. Additionally, the landlord was aware that they could serve a notice to end tenancy for unpaid rent in September.

The tenants did not attend the hearing and did not submit documentary evidence for consideration.

### Analysis

Section 56 of the *Act* provides that a tenancy may end earlier than a normal prescribed period if one or more of the outlined conditions applies. These conditions reflect dire or urgent circumstances. The legislation regarding an order of possession reads as follows:

- 56(1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end tenancy were given under section 47 [*landlord's notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.

Section 56(2) sets out two criteria. First, the landlord must prove the cause for issuing the Notice. Second, the evidence must show it would be unreasonable or unfair to the landlord to wait for a set-period Notice to End Tenancy to take effect under a different section of the *Act*. The determination of cause considers the following situations of immediate and severe risk:

- 56(2) . . .
- (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 . . .

The landlord here presents tangible evidence that the tenants are disturbing other neighbourhood residents. However, I find this conduct is not on a level with what is set out in section 56(2). Police visits due to parties until late in the evening, though troublesome, do not constitute a situation where significant interference or unreasonable disturbance is brought forward. I find it is not immediate or threatening to others and does not pose a severe risk.

Similarly, the danger of COVID hangs over the larger-sized social gatherings. I find this is a matter of public health and trust in the proper authorities to investigate the situation and take appropriate action based on their findings. There is no evidence that an immediate urgent threat was identified such that a positive diagnosed case was present at party events at the rental unit. That is not the case here. Though serious in nature, I find there is no jeopardy to health or safety here.

The communication from the by-law officer reveals ongoing concerns with the state of the outdoor area of the property. I find this is not extraordinary damage and is not putting the landlord's property at significant risk. Rather, the concern from the by-law officer's perspective is that the property is "unsightly."

Applications of this sort involving section 56 are for very serious breaches; however, I do not see a serious breach in place here which threatens other occupants or the property of the landlord. An imminent danger with palpable effects is not proven by the evidence presented. The landlord has not shown that this means of ending the tenancy must happen over and above that of other sections applicable in the *Act*.

In conclusion, I find the tenants' behaviour does not rise to a level that is sufficient to end the tenancy in this manner. This is based on the evidence presented by the landlord in this hearing.

I find the landlord has not proven there is a valid reason to justify an order that ends the tenancy early by application of section 56. I am not satisfied that the matter at hand is

one that is above what would normally be covered by a section 47 one month Notice to End Tenancy. Additionally, the landlord presented evidence of unpaid rent and/or utilities, which presents another avenue for ending a tenancy.

### Conclusion

The landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed 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 *Act*.

Dated: September 21, 2020

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Residential Tenancy Branch