



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BEA HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing dealt with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary and Procedural Matter(s)

#### 1. Naming of parties

I noted the landlord had submitted a tenancy agreement into evidence and it identifies the landlord as being a corporation, yet, the landlord was identified as an individual on the Application for Dispute Resolution. I heard the property is owned by the corporation and the individual appearing before me is a shareholder of the corporation. I also heard the tenant pays rent to the corporation. With consent of both parties, the landlord's name was amended to reflect the corporation.

The tenant stated the landlord used her maiden name in identifying her and she has not used her maiden name in several years. The tenant testified her legal name is her married name and she confirmed she has government issued identification to show her legal name is her married name. The landlord's agent explained she obtained the tenant's last name from a man staying in the rental unit when the tenant was out of town. I noted the tenant's signature on the tenancy agreement is different than on the "storage agreement" also provided in evidence. The tenant stated she did not sign the tenancy agreement but she did sign the storage agreement. I noted the signatures on the tenancy agreement and the storage agreement are quite different and the signature

appearing on the storage agreement is consistent with the tenant's married name. The landlord's agent acknowledged she observed the tenant sign the storage agreement but not the tenancy agreement. With consent of both parties, the tenant's name was amended to reflect her married name.

### Issue(s) to be Decided

Has the landlord established a basis for ending the tenancy early and obtaining an Order of Possession under section 56 of the Act?

### Background and Evidence

The tenant entered into a tenancy with the former landlord in May 2018 and the tenant was required to pay rent of \$600.00 on the first day of every month. The tenant paid a security deposit of \$300.00. The current landlord purchased the property in December 2019 and the rent was changed to \$615.00 per month. In addition, the tenant pays \$50.00 per month for two storage units.

The landlord's agent submitted that the landlord has made the building a non-smoking building and the landlord assured new tenants that the building was non-smoking. However, the building manager noticed smoke coming from the rental unit window in January 2020 and again in the springtime. Cigarette butts were also found outside below the window of the rental unit. The landlord's agent believes the manager spoke with the tenant about it, orally, and the matter was resolved until a complaint came in from the tenant residing above the rental unit (herein referred to as the complainant).

The landlord's agent testified the complainant called the landlord on August 31, 2020 to inform the landlord smoke was coming in her windows and that her son has asthma. In response to the complaint, the landlord then served the tenant with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), on August 31, 2020. The landlord's agent stated the 1 Month Notice was issued in response to the complaint of smoking and other issues. The landlord's agent testified that after serving the tenant with the 1 Month Notice, the tenant contacted the landlord and admitted there was smoking taking place in her unit but that it was not the tenant and she would deal with that person. The landlord asked the complainant to put her complaint in writing, and the landlord received an email from the complainant on September 1, 2020, which was provided as evidence.

The tenant filed to dispute the 1 Month Notice on September 9, 2020 and a hearing is scheduled for November 2, 2020 (file number provided on cover page of this decision).

As for the “immediate and severe” risk to the property that cannot wait for the 1 Month Notice to take effect, the landlord submitted that smoking in the rental unit is going to cost thousands of dollars to rectify and because the complainant’s child has asthma.

The tenant acknowledged that she is a smoker but she denied smoking in the building. The tenant stated she smokes at the end of the pathway by her car or across the parking lot in the designated smoking area. The tenant stated she occupies the rental unit with her 19 year old nephew, her 17 year old nephew, and a five year old foster child but the tenant did not admit that her nephews smoke. The tenant testified that other tenants in the building are smokers too.

The tenant denied that she received any warning from the manager about her smoking. Rather, the tenant described a general notice that was given to all tenants that no smoking is permitted in the building. The tenant was aware of a warning concerning excessive noise.

I informed the parties I was not going to permit submissions concerning other issues such as excessive noise as the only issue identified by the landlord in this Application for Dispute Resolution was smoking.

### Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 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 the 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.

(2) 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.

[My emphasis underlined]

The landlord's burden in these cases is high as section 56 is intended to apply in the most serious and severe of circumstances.

In this case, the landlord had issued a 1 Month Notice in response to a complaint of smoking by the tenant or another occupant of the rental unit. In order for the landlord to succeed in this Application for Dispute Resolution, I must be satisfied that the circumstances are so severe and urgent that it is not reasonable to wait for the matter to be resolved by way of the 1 Month Notice, that has been served and set for hearing.

The landlord pointed to the complainant's child as being asthmatic as a basis for considering this matter severe and urgent; however, I was not provided any medical evidence that supports the assertion of the child living above the rental unit is asthmatic. Nor, was the complainant called to testify in support of that assertion. Rather, I am left with an email purportedly written by the complaint stating her child has "asthma-related issues".

The landlord points to the cost to prime the walls to rid the walls of smoke damage/smell; however, if the smoking has already taken place in the rental unit, since January 2020 as the landlord submits, I am of the view the damage has already occurred and I fail to see the urgency at this point in time that would warrant an emergency eviction rather than dealing with the matter on November 2, 2020 when the 1 Month Notice is set to be addressed.

For reasons provided above, I find the landlord failed to satisfy me that an urgent and severe risk is being posed to the property or other occupants that cannot wait for the dispute over smoking to be resolved by way of the 1 Month Notice that has already been issued and set to be heard on November 2, 2020. Therefore, I dismiss this Application for Dispute Resolution.

It is important to point out, I have made no finding as to whether the tenant, or another occupant of the rental unit, is smoking in the rental unit as I found this application fails because of lack of evidence of an urgent and severe risk that cannot wait for the matter to be resolved by way of the 1 Month Notice to End Tenancy for Cause that has already been served.

### Conclusion

The landlord's request for an early end of tenancy and Order of Possession under section 56 of the Act 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 *Residential Tenancy Act*.

Dated: October 22, 2020

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Residential Tenancy Branch