



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding  
SuperiorLivingUtilizingManagedSustainabilities 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 to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord sets out its name in the application without leaving any spaces between the words that make up the name of the Landlord. The Landlord confirms that there should be spaces but did not amend its application to correct the name. The Landlord declined to provide any argument or evidence of reasonably anticipated circumstances for the application to be amended at the hearing.

Rule 4.2 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that in circumstances that can be reasonably anticipated, an application may be amended at the hearing. As there are no circumstances provided to support an amendment at the hearing and as the Landlord does not appear to seek an amendment of the Landlord’s name, the application will remain as is.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on September 1, 2019. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit and \$300.00 as a pet deposit.

The Landlord states that the Tenants have been disturbing other tenants since the onset of the tenancy. The Landlord states that in May 2020 the Tenants were served a one month notice to end tenancy for cause in relation to these disturbances and that the matter was then resolved by agreement with the Tenant. The Landlord provides an undated document attached as evidence with a one month notice to end tenancy for cause, dated May 18, 2020. The document has the following notation on the bottom: "Tenant agreed to a 10 day eviction if are more disturbance" (reproduced as written).

The Landlord states that between September 15 and October 1, 2020 the Landlord received 4 complaints from 3 neighbouring tenants about their concerns of traffic in and out of the unit. The Landlord states that these tenants are complaining about moving out of their units as they think there are drugs involved with the unit. The Landlord states that one of the complaining tenants called the police on one occasion about the traffic. The Landlord states that the police attended the unit, knocked on the door and left when nobody answered. The Landlord states that the police informed the Landlord that the police have a long history with the Tenants. The Landlord confirms that it has no idea what that long history involved.

The Landlord states that previously the police attended the unit for domestic disturbances in February 2020. The Landlord states that the Tenants caused severe

risk to other tenants during this time by throwing things off the balcony. The Landlord does not know what thing were thrown off and was only told that “stuff” had fallen off chairs. The Landlord states that this incident occurred at around midnight.

The Landlord states that all other incidents occurred prior to May 18, 2020 and that the May 2020 notice was in relation to these incidents that were resolved by the agreement with the Tenant. The Landlord confirms that on October 3, 2020 the Tenants were given a 10-day notice to end tenancy for unpaid rent and that this notice was not disputed by the Tenants. The Landlord states that the rental amount set out on the notice has remained unpaid but that the Tenants paid partial rent for November 2020.

The Landlord states that on November 7, 2020 at approximately 4:00 a.m. the police were called to the unit as the Tenants had broken a bathroom window that shattered on the ground.

The Tenants state that they do not have persons coming and going from their unit, that they have no drugs whatsoever in the unit and that they have never been investigated for drug trafficking. Tenant ML states that it works more than one job with both day and night shifts and will frequently get called out for work sometimes at 2:00 or 3:00 a.m. The Tenant states that on the occasion where things were dropped off their balcony, they were cleaning the unit. The Tenant states that items such as plastic, plastic containers and other bulky garbage items were dropped. The Tenant states that nothing heavy was dropped and that the area was safe due to a 6-foot fence that prevented persons from being in the area. The Tenants deny that there was any fighting between themselves at the time.

The Tenants state that the bathroom window had been broken along with having an old and broken frame since move-in and that the Tenants did not cause the window to fall to the ground. The Tenants state that they did not know that the window fell out until after the police were called.

### 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.

This section of the Act requires the presence of an immediate and severe risk such that a landlord could not wait to serve a one month notice for cause. The Landlord's evidence of incidents prior to May 2020 cannot be considered as evidence for an early end of tenancy as these matters were resolved and occurred some time ago. I find

therefore that the Landlord has not substantiated any immediate risk and severe risk arising from these incidents.

There is no evidence of any illegal activity other than a suspicion based on traffic in and out of the unit. The Landlord provided no supporting evidence of such traffic. The Landlord provided no witness statements from other tenants. Given the Tenants' rebuttal evidence, including that of one of their work schedules, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants have constant foot traffic in and out of their unit due to drugs or for any other reason. For this reason, I find that the Landlord has not substantiated an early end to the tenancy on this evidence.

The incident in February 2020 is too remote in time to be accepted as evidence of an immediate and severe risk to substantiate an early end to the tenancy. Evidence of an agreement not to disturb others is not evidence of an immediate and severe risk to substantiate an early end to the tenancy. The Landlord has not provided any supporting evidence that the Tenants caused a window to be broken and dropped from their unit. The Tenants gave undisputed evidence of the window having been damaged since the onset of the tenancy. Further the Landlord gave no evidence as to the nature of the objects being dropped. Overall and given the Tenant's evidence I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the Tenants caused a severe risk to anyone or anything during this incident. For these reasons I find that the Landlord has not substantiated an early end to the tenancy and is therefore not entitled to an order of possession. As the Landlord has not been successful with its claim to end the tenancy, I dismiss the Landlord's claim for recovery of the filing fee and in effect the application is dismissed in its entirety. The tenancy continues.

### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: November 25, 2020

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Residential Tenancy Branch