



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kingcome Investments Ltd. and  
[tenant name ppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 10:25 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by representative JP, building manager WL, counsel RH (the landlord) and advocate SB, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness JD also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her witness and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) on November 06, 2020 by attaching the materials to the tenant's rental unit door, in accordance with section 89(2)(d) of the Act. A witnessed proof of service was submitted into evidence.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if attached to a door, on the 3<sup>rd</sup> day after it was attached. Given the testimony and evidence, the tenant is deemed to have received the materials on November 09, 2020, in accordance with section 90 (c) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of tenancy?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the landlord; it is their obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on July 28, 2020. Monthly rent in the amount of \$1,300.00 is due on the first day of the month. The landlord holds the security deposit of \$650.00. The tenancy agreement was submitted into evidence.

The landlord applied on October 30, 2020 to end the tenancy early on the basis of the tenant's use of the rental unit for prostitution and drug activity. The landlord provided two caution notices sent to the tenant. The October 08, 2020 notice states:

should there be any further incident or circumstances warranting termination of tenancy we will have no alternative but to issue a notice.

DATE OF OCCURRENCE: October 8/2020 INCIDENT: Disturbing the other tenants and <sup>Landlord</sup>

Tenant has disturbed a number of other tenants with loud door banging, loud guests, late night door buzzer, loud voices both in and outside the suite. See attached section 17 of your Residential Tenancy Agreement.

The Residential Tenancy Act, Sec. 47 (1) - Grounds For Termination

The October 16, 2020 notice states:

notice.

DATE OF OCCURRENCE: Oct. 15 + 16, 2020 INCIDENT:

Continuous noise between the hours of 6:00pm, October 15 and 6:00am, October 16 disturbing the quiet enjoyment of several tenants. See attached Section 17 of your Residential Tenancy Agreement

The Residential Tenancy Act, Sec. 47 (1) - Grounds For Termination

The landlord submitted an advertisement for prostitution printed on October 24, 2020. It indicates it was posted on October 06, 2020 and has been viewed 15,501 times. The landlord stated the name and height on the advertisement are the same ones of the tenant.

The landlord also submitted complaint letters received from witness JD on October 07 and 16, 2020 about “loud male voices, revolting smells and the constant slamming of the screen door which continually interrupted my night. These issues continued throughout the night into the early morning.” The landlord received a third complaint letter, with similar concerns, on October 19, 2020.

WL stated the police are investigating the tenant, since the day she moved in he can smell marijuana odour from her rental unit and other tenants complained to him about the respondent tenant. The complaints are about drug usage, prostitution and noise. WL testified he lives in the rental building and “has a great view of all that happens”.

The landlord said she only learned about the prostitution advertisement on October 23, 2020. It would be unfair and unreasonable to wait for a one month notice to end tenancy.

The landlord also submitted into evidence images captured by rental building's security camera dated back to September 04, 2020. The landlord affirmed these images show males attending the tenant's rental unit.

Witness JD testified she has been aware of the tenant's involvement with prostitution and drug activity since early September 2020.

### Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56 (2) of the Act, where it states:

(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.**

(emphasis added)

Residential Tenancy Branch Policy Guideline 51 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

**The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).**

**Without sufficient evidence the arbitrator will dismiss the application.** Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the

landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Based on the testimonies provided by the landlord and witnesses WL and JD, complaint letters received on October 07, 16 and 19, 2020, caution notices provided by the landlord on October 08 and 16, 2020 and security camera footage dated back to September 04, 2020, I find the landlord has been aware for some time of multiple complaints against the tenant, the earliest complaints were submitted on July 28, 2020. The landlord filed this application on October 30, 2020.

I find it would not be unreasonable or unfair to the landlord and other occupants of the residential property to wait for a notice to end tenancy under section 47 of the Act. The landlord's application does not meet the requirement of section 56(2)(b) of the Act.

Therefore, I dismiss the landlord's application for an early end to the tenancy pursuant to section 56 of the Act.

As the landlord is not successful in this application, the landlord must bear the cost of his filling fee.

### Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues in accordance with the Act.

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: November 30, 2020

---

Residential Tenancy Branch