



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

On October 7, 2020, the Landlord made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “Act”).

K.W. attended the hearing as an agent for the Landlord. The Tenant attended the hearing with J.L. as his advocate, and with T.J. attending for support. All parties in attendance, with the exception of T.J., provided a solemn affirmation.

K.W. advised that the Tenant was served with the Notice of Hearing and evidence package by hand on or around October 8, 2020 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, I am satisfied that the Tenant was served the Notice of Hearing and evidence package. As such, I have accepted this evidence and considered it when rendering this Decision.

J.P. advised that the Tenant’s evidence was served to the Landlord by registered mail on October 30, 2020 and K.W. confirmed that the Landlord received this package. He also did not have any opposition regarding when or how this package was served. As such, I have accepted this evidence and considered it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an early end to this tenancy and an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2017, that rent was currently established at \$750.00 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

K.W. advised that he has acted as an agent for the Landlord since mid-August 2020 because the relationship between the Landlord and Tenant has become hostile and untenable. He stated that the Landlord needed access to his garage because he wanted to sell his forklift. However, he was unable to access the garage because the Tenant would intentionally park his car in front of the garage, restricting access to the Landlord. He is not sure when this problem started, and he is not aware of any steps the Landlord took to deal with this issue. K.W. submitted that he attempted to facilitate an agreement with the Tenant on September 29, 2020 to rectify this issue, but the Tenant started to park his vehicle in front of the garage again, subsequent to this date.

K.W. also advised that the Tenant suffers from a medical condition which has led to outbursts against neighbours, the Landlord, and K.W. He referenced a letter dated August 2, 2020, submitted as documentary evidence, from a neighbour that stated that the Tenant swore for three minutes. However, he could not speak to any details of this incident or what was said specifically. K.W. also stated that when he first met the Tenant, he was yelled and sworn at, but after that, things settled down.

He cited the police business cards, that were submitted as documentary evidence, and advised that the Landlord had called the police numerous times regarding the restricted access to his garage. However, the police advised that they could not do anything about this as it was a residential tenancy matter. He stated that the police never took any

action against the Tenant over any alleged behaviours. K.W. testified that the Tenant did say to him that he would damage the property if he were ever evicted though.

J.L. questioned K.W. about the parking issue and K.W. advised that the Landlord never gave the Tenant any written notice that he was not permitted to park in front of the garage. The Tenant advised that he had been parking in the garage for the last three years, until he was asked verbally by the Landlord, two months ago, to move his vehicle out of the garage. He was never given any written notice or a reason for this change. He stated that there are other spots that he could potentially park instead of directly in front of the garage.

Regarding K.W.'s submissions about the Tenant's behaviour, J.P. challenged whether a three-minute verbal interaction with the neighbour would justify an early end of tenancy. The Tenant advised that the police attended on two occasions. During this first interaction, they wanted to hear his side of the story, and on the second occasion, they inspected the garage. J.L. submitted that there have been no incidents of violence or threats, and while there may have been some verbal disagreements, there have been no situations that would warrant an early end of tenancy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 56 of the *Act* establishes the grounds for the Landlord to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*

- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

When reviewing the totality of the evidence before me, I find it important to note that the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regarding the allegations of the Tenant parking his car in front of the garage and blocking access to the forklift, I do not find that K.W. has submitted sufficient or compelling evidence to substantiate that if the Tenant is in fact doing this, how this act would satisfy the elevated threshold of an early end of tenancy Application.

With respect to K.W.'s submissions about the Tenant's outbursts, K.W. has referenced one three-minute incident that was corroborated with a complaint letter. However, he could not speak to any details of this incident or explain how this might be considered threatening and/or aggressive. Apart from this one incident, K.W. has provided insufficient evidence to support that any of the Tenant's alleged behaviours or actions would satisfy the elevated threshold of an early end of tenancy Application.

Based on the totality of the evidence before me, I do not doubt that both parties have been engaging in actions and behaviours that are likely questionable, inappropriate, spiteful, and are aggravating factors which contribute to the dysfunctional relationship between them. However, as the onus is on the Landlord to prove his claims, under the circumstances described, I find that there is insufficient evidence provided to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlord is not entitled to an Order of Possession and I dismiss this Application in its entirety.

Conclusion

Based on the above, I dismiss the Landlord's Application 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: November 17, 2020

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Residential Tenancy Branch