



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was scheduled for 9:30 a.m. on this date to deal with a landlord's application for an early end of tenancy and an Order of Possession under section 56 of the Act.

At the outset of the hearing, one of the landlords and three tenants appeared. I noted that there were only two tenants named on the application before me. JM appeared and presented herself as being a tenant; however, she was not named on the Application for Dispute Resolution before me. All the parties were in agreement that JM is a tenant in the same rental unit as the other two named tenants.

### Procedural and preliminary matters

I enquired with the landlord for the reason JM was not named on this Application for Dispute Resolution. The landlord stated that JM is being evicted for another matter and there was a hearing taking place at the same time and date as this hearing. JM confirmed that there is another hearing set for this same time with respect to an eviction for unpaid rent. I was provided a file number for another dispute resolution proceeding (referenced on the cover page of this decision) and I confirmed that there is another proceeding taking place at the same time concerning the same rental unit. I encouraged JM to call into the other hearing. JM left the hearing with me to attend the other hearing and I continued to hear from the two tenants named on this Application for Dispute Resolution by the landlord.

The landlord stated that there was an agreement entered into with the tenants but that they do not have a tenancy agreement. I informed the landlord that my jurisdiction is limited to tenancy disputes and if the parties do not have a tenancy agreement, I do not have jurisdiction to resolve their dispute. I explored this issue further.

The landlord and the tenant confirmed that for the period of July 21, 2020 through July 31, 2020 the tenants occupied the rental unit in exchange for rent of \$500.00 that was to be paid by July 31, 2020. The tenants paid this amount on August 6 or 11, 2020. The landlord provided the two different dates to me and the tenant acknowledged she could not recall what date it was paid but that it was paid.

The parties provided consistent testimony that on August 5, 2020 the landlord signed an "Intent to Rent" document for each of the named tenants indicating the monthly rent was \$1500.00 for the two named tenants and a security deposit of \$750.00 was required from the both of them even though the tenants and the landlord had an oral agreement that \$1500.00 was payable by the three co-tenants. The tenants testified that the landlords also signed an "Intent to Rent" form for JM indicating her rent was \$625.00. The parties provided consistent testimony that Income Assistance sent the landlord \$750.00 for a security deposit for the two named tenants on August 6, 2020 and the tenants paid \$1000.00 for rent to the landlord on the same day.

On August 11, 2020 the landlords told the two named tenants to move out, without giving them a Notice to End Tenancy, and the two tenants did after the landlord gave the tenants their security deposit, but then the tenants returned to the rental unit a couple of hours later and resumed living in the rental unit with JM.

On August 20, 2020 the landlords required and the tenants paid the landlord an additional \$500.00 for August 2020 rent. On September 11, 2020 the landlord collected another \$1000.00 from the two named tenants for September 2020 rent.

I noted that the oral testimony as the amount of rent payable is inconsistent with the Intent to Rent documents signed by the landlord, as described to me, and there was no written tenancy agreement to provide clarity. **The parties before me provided consistent testimony that there was an oral agreement between the parties that the three co-tenants would be required to pay rent to the landlords in the total amount of \$1500.00 on the first day of every month.** The tenants appearing before me stated they had requested a written tenancy agreement from the landlords but that the landlords would not sign one because they had provided a different Intent to Rent document for JM. The landlord testified that JM refused to sign a tenancy agreement with the two named tenants. In any event, I was provided consistent testimony by the parties that rent was expected to be paid to the landlord for the tenants use and occupation of the rental unit and rent was in fact paid and accepted by the landlord. As such, I accept that a tenancy agreement formed between the parties and that the Act

applies. The definition of tenancy agreement includes an agreement concerning a tenant's right to possession of a rental unit that is entered into in writing or orally, and by implies or express terms. Accordingly, I accepted jurisdiction to resolve this dispute.

### Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord should be provided an Order of Possession under section 56 of the Act?

### Background and Evidence

As recorded above, the parties provided consistent testimony that the three co-tenants were required to pay the landlords rent in the total amount of \$1500.00 on the first day of every month.

After paying rent on September 11, 2020 the tenants testified that the landlord gave them a letter on September 25, 2020 to vacate the rental unit within five days, on September 30, 2020.

The tenants did not vacate the rental unit by September 30, 2020 and it is undisputed that the tenants did not pay rent on October 1, 2020. The tenant explained that the landlord informed Income Assistance that they were no longer tenants so the tenants did not get their shelter portion of the Income Assistance. The landlord explained that she did not consider the tenants to be tenants under a tenancy agreement so she did not give the tenants a proper Notice to End Tenancy but that she did not call Income Assistance. Rather, the landlord claimed that someone from Income Assistance called her to ask how the tenancy was going and if the tenants had paid their rent. The tenants called into question the landlord's statement, claiming Income Assistance does not make such enquiries.

On October 2, 2020 there was an incident at the property that involved the police being called to the property by the landlords. The parties had a different version of events as to what occurred, as summarized below:

The landlord testified that she and her husband heard the smoke detector go off in the rental unit so they knocked on the rental unit door to see what had happened. According to the landlord the male tenant became very angry, yelling and swearing and then he threatened to kill the male landlord. The police were called to the property and came to speak to both the landlords and the tenants. Nobody was arrested or removed

from the property; however, the landlord claimed the police told her to get rid of the tenants by filing for an emergency eviction. The landlord provided a police file number on a police officer's card in support of the allegation.

The tenant testified that the smoke detector did not sound on October 2, 2020. Rather, she and the male tenant were sleeping when the landlords began banging on all of their windows. The tenants opened the door and were having a calm conversation when the male landlord called the female tenant an insulting name. The male tenant became agitated by the landlord's remark so the tenant took him inside the rental unit and closed the door. The male tenant was angry and loud after he was inside the rental unit and the door was closed. The tenant testified that the police talked to them and the tenants were very calm and after seeing that the police did not arrest or charge anybody.

The landlord was of the position the police did not arrest anybody because the tenants said they were moving out the following week.

On October 11, 2020 the landlord posted a note on the door of the rental unit informing the tenants that rent was due. The landlord uploaded a copy of the note posted to the door.

On November 7, 2020 the landlord posted another note on the door concerning unpaid rent and uploaded a photograph of that.

### 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 One 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.

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

It is clear to me that the landlords have not received rent due to them on October 1, 2020 and that collecting rent in full and on a timely basis has been a significant issue with this tenancy.

It is undisputed that on October 2, 2020 the police were called to the property after the landlords went to the rental unit; however, the parties provided differing versions of events before police were called.

Essentially, all I am left with is opposing oral testimony as to the circumstances that lead to the police attendance on October 2, 2020. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim. In this case, the landlord has the burden of prove and I find the opposing oral testimony of the landlord is insufficient. I also noted several inconsistencies in the landlord's testimony and conduct which has led to me to doubt her credibility. For instance, the landlord was of the position the parties did not have a tenancy even though she required and accepted rent from the tenants. The landlord claimed Income Assistance called the landlord to enquire as to how the tenancy was going which I find to be highly unlikely. The landlords appeared to engage in fraudulent conduct in completing Intent to Rent documents for the three co-tenants. The landlords went to the rental unit on October 2, 2020 when a dispute arose and this is the day after the tenants did not pay rent and rent appears to be the primary dispute between the parties.

I have also considered that the police did not arrest or remove any of the tenants or occupants of the rental unit after attending the property. Had a credible and serious threat of someone's life been made I would expect the landlords would have requested and pursued removal and charges against the tenant and that a promise to vacate a week later would be insufficient response to a serious and credible complaint of a death threat.

In light of the above, I deny the landlord's Application for Dispute Resolution in its entirety.

As I informed the parties during the hearing, if rent remains unpaid, the landlords remain at liberty to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent in the approved form.

Conclusion

I have found that a tenancy exists between the parties and that the agreement was for the three co-tenants to pay the landlords rent in the total sum of \$1500.00 on the first day of every month.

The landlord's request for an order to end the tenancy early and obtain an 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: November 19, 2020

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Residential Tenancy Branch