



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

ET, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 13, 2020, wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Act*, as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on November 24, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenants were also assisted by legal counsel, J.D.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an early end to tenancy?
2. Should the Landlord recover the filing fee?

### Background and Evidence

This tenancy began for a fixed term August 1, 2017 and continued on a month to month basis.

The parties disagree as to the amount of rent payable. However, by Decision dated July 31, 2020, monthly rent was found to be \$6,800.00. The Tenant also paid a security deposit of \$6,000.00; again, by Decision dated July 31, 2020, \$2,750.00 of this payment was ordered returnable to the Tenant as an overpayment of the security deposit. The file number for that matter is included on the unpublished cover page of this my Decision.

The Landlord issued a 1 Month Notice to End Tenancy on July 20, 2020 (the "Notice"). The effective date of the Notice was September 1, 2020. The parties attended a hearing on the merits of the Notice on September 17, 2020, and a continuation of that matter is scheduled for December 10, 2020. The file number for that matter is also included on the unpublished cover page of this my Decision.

The Landlord indicated on her Application that the reasons she sought an early end to tenancy are as follows:

*Tenant put Landlord's property at significant risk of FIRE and threatened to burn her house down Tenant jeopardized health of Landlord by not wearing mask and coming at her face with uttering threats of burning the house down spraying his spit at Landlord's face There is imminent danger with palpable effects on evidence, pictures & notifications attached. It is unreasonable for Landlord to wait as Landlord is verbally assaulted repeatedly and her property at significant risk of fire*

[Reproduced as Written]

The Landlord testified that on November 2, 2020, the Tenant's partner, A.B., threatened to burn the rental house down. She stated that on this date, she came to the rental unit to show it to prospective tenants. She stated that when she raised concerns about fire hazards at the rental property A.B. said: "You are crazy. You are crazy. I will burn your house down". The Landlord stated that she felt very afraid as she claimed he was also yelling and spitting at her and was not wearing a mask. She said she felt very scared and ran out of the house and was so shaken she does not remember very much after that.

The Landlord claimed that this is a pattern of abuse from the Tenant's boyfriend and further claimed that he yells at her; in support she referenced emails she had sent to the Tenant in early October 2020 wherein she informs the Tenant her boyfriend is abusive.

The Landlord further testified that she is currently living in a rental as her own home burned down five years ago. She stated that the Tenant and her boyfriend are aware of this tragedy.

In terms of her allegation that the Tenant is putting the rental property at significant risk of fire, the Landlord stated that on one occasion when she was at the property, she noticed a "big heating machine" beside the bed and a plug which had been burned out. She also testified that the Tenants have burned the top of the closet doors by using light bulbs which are inappropriate for the fixture.

The Landlord submitted photos of the rental unit which showed closet doors which when open are close to the light fixture and resulting burn marks. She stated that the tenancy needs to end immediately as she believes that the Tenant and her partner will cause irreparable harm as they are putting her property at significant risk.

In response to the Landlord's testimony and submissions the Tenant's partner, A.B. testified as follows. He confirmed that he resides in the rental unit and has been there for the duration of the tenancy.

A.B. stated that there has been arguments and disagreements with the Landlord and at times they have both raised their voices but denied ever verbally abusing her or threatening to burn down the rental unit. In terms of the Landlord's allegation regarding the events of November 2, 2020 he stated emphatically that he has never threatened to burn down the house.

A.B. further stated that on November 2, 2020, the Landlord entered the house without knocking. He confirmed that she gave notice that she would be attending but he was surprised when she entered without knocking. A.B. stated that she asked to have all the lights turned on and he confirmed he would do so and asked her to wait outside. He also asked the Landlord to ensure that she and the prospective tenants would wear masks.

A.B. confirmed that he was not initially wearing a mask, but when she came back in, he put his mask on. He said that the Landlord then showed the house to a prospective tenant. A.B. stated that he was on the phone and his computer the entire time and had

no interaction with the Landlord or her prospective tenant while she was showing the house. He denied calling the Landlord crazy or raising his voice with her and reiterated that the only interaction he had with her was when she first arrived.

A.B. further testified that he was not in their bedroom alone with the Landlord on November 2, 2020, nor at any other time over the course of the tenancy. He also stated that after she finished showing the house she continued with the prospective tenant outside the house. He stated that they did not have any additional interaction after she came into the house unannounced.

A.B. stated that there were no other times that the Landlord attended the residence in November. He stated that there have only been one or two showings in the recent past. A.B. stated that there have been no other times when he has been home alone when she has attended.

A.B. stated that at no time did the Landlord raise any concerns about fire on November 2, 2020. A.B. stated that the Landlord has, at other times, complained to the Tenant about the light bulbs to which A.B. stated that the light bulbs are the exact type of light bulb that are recommended for the light fixture. A.B. stated that he did notice the plastic laminate began to peel, at which time they became aware that the door being opened put the door close to the light bulb.

In terms of the Landlord's allegation that the Tenants are putting the rental unit at risk of fire, A.B. testified that there is a fan near the bed, a Dyson air circulation fan which cools, not heats the room. He noted that the lights above the closet doors are a design flaw which they did not even notice until the plastic started to peel.

The Tenant also testified. She confirmed she was not at the residence when the Landlord showed the property to prospective Tenants on November 2, 2020.

The Tenant stated that at no time has she witnessed A.B. being verbally abusive to the Landlord. She also stated that the only time the Landlord ever raised these concerns were in the emails she provided in evidence.

The Tenant confirmed the Landlord has raised concerns about fire hazards by the notices that she has provided but she has not raised them outside of this. She stated that this is why they engaged a lawyer as they were concerned about the Landlord's false allegations and threats.

The Tenant stated that for three years they have stayed in the house without incident. They were initially supposed to move out July 31, 2020 as that was the expiration of their fixed term. However, they were not able to move out as the construction of their home was delayed due to Covid-19. At that time Tenant informed the Landlord they would stay on a month to month basis. The Landlord responded that she would let them stay for six months but would not rent it out on a month to month basis. The Tenant stated that the Landlord then started escalating her threats and at that time the Tenant filed her first Application with the Residential Tenancy Branch.

The Tenant stated that she does not believe that she has replaced the light bulbs above the closet. The Tenant confirmed that in the last six months they noticed that when the closet doors are open, they pass under the light and this causes damage. She stated that if she takes out the lights the closet would be dark, and it will be difficult to use it.

The Landlord replied to the Tenant, and A.B.'s testimony and submissions as follows.

In terms of the Tenant's allegation that there were no issues until the Tenants informed her that they would only stay on month to month, the Landlord stated that the Tenant knew as of June that she was going to stay. She also claimed that there were no issues, except for the yard work. She stated that when she noticed the closet doors, she wrote to the Tenant about the fire issue. The Landlord stated that they resolved matters in July, and they were "doing their own thing" until the Tenant filed another dispute.

The Landlord stated that there was a new burn mark in July and that's when she became concerned about fire. She brought this to the Tenant's attention by email, copies of which she provided in evidence. At that times he also informed he Tenant that her boyfriend was being rude to her and harassing and attacking her.

The Landlord confirmed that she was willing to rent the unit to them for a further fixed six-month term and communicated this to them on July 9, 2020. She stated that the only issue was that they wanted a reduced rent. The Landlord stated that she was happy to have them stay and pay \$6,800.00 and do the yard work. But then they failed to do the yard work and then they created a fire risk. She confirmed this fire risk and the incident on November 2, 2020 are why she wants the tenancy to end.

## Analysis

Section 56 of the *Act* provides that a tenancy may be ended early if the Landlord provides sufficient evidence that the Tenant has:

- significantly interfered with the Landlord or another occupant of the residential property;
- seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant;
- put the Landlord's property at significant risk;
- engaged in illegal activity that
  - has damaged or is likely to damage the Landlord's property,
  - has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
  - has jeopardized a lawful right of another occupant or the Landlord; or
- caused extraordinary damage to the residential property

*and* it would be unreasonable or unfair to the Landlord or other occupants to wait for a notice to end tenancy for cause to take effect (emphasis added)

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

In this case, the Landlord alleges the Tenant has put her property at significant risk of fire and that the Tenant's partner threatened to burn the house down. For these reasons she seeks to end the tenancy early.

The Tenant and her partner adamantly deny the Landlord's allegation. A.B. denies threatening the Landlord's property or yelling at her without a mask on the date in question or at any time. The Tenant also testified that at no time has she ever witnessed A.B. verbally abuse the Landlord. The Tenant and her partner also deny putting the Landlord's property at significant risk. They submit that the light placement above the closet door is a design flaw and state that they were unaware that the heat caused damage to the door when the door was left ajar. A.B. also stated that the "heating machine" the Landlord referenced during her testimony was actually a cooling fan. Tenant submits that the Landlord has escalated her allegations and threats since

they refused to sign on for a further six-month term and rather continued their tenancy on a month to month basis.

The Landlord bears the burden of proving her claim on a balance of probabilities; that is, she must prove to me that her version of events is more likely than the Tenants'. In this case, I find the Landlord has failed to meet that burden. I am not satisfied A.B. threatened to burn the rental unit down on November 2, 2020, nor am I satisfied he called the Landlord "crazy" or yelled and spit at her without a mask. I simply do not accept the Landlord's testimony in this regard. Where the evidence of the Landlord and A.B. conflicts, I prefer that of A.B. I found him to be straightforward and consistent in his testimony. Conversely, I found the Landlord prone to exaggeration and histrionics.

The Landlord testified that she suffered a devastating fire five years prior. Clearly, this tragedy caused her considerable distress. When speaking of the damage to the top of the closet doors, the Landlord described the damage as *extraordinary* and characterized this as an *extreme* fire hazard; these exaggerated descriptions are not supported by the evidence and are more likely due to the trauma she continues to experience when remembering her own house fire. While the placement of the pot lights appears problematic, I agree with the Tenant and A.B. that this is a design flaw which was not initially apparent. I accept A.B.'s testimony that the light bulbs are appropriate for the fixture, however, the placement of the pot light is such that when the closet doors are open, they are too close to the fixture. In any event, the photos do not support the Landlord's allegations of an *extreme* fire hazard or *extraordinary* damage.

The Landlord submitted that in a prior decision of the Residential Tenancy Branch an Arbitrator ended a tenancy due to a cigarette burn mark on a tenant's sofa. I find smoking in the rental unit to be an *intentional* act which can put the property at risk. Conversely, in the case before me, I find the Tenant and A.B. were using the closet doors as intended. The normal use of the closet doors, and coincidental placement of the light and proximity to the doors, is not comparable to smoking in the rental unit.

As counsel for the Tenant aptly noted, *Residential Tenancy Branch Policy Guideline 51—Expedited Hearings*, provides as follows:

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.

In this case, the only evidence I have to support the Landlord's claims regarding the November 2, 2020 incident is her testimony. She did not provide any evidence from other witnesses, and her version of events was contested by the Tenant's partner. In these circumstances I find the Landlord has failed to provide sufficient evidence to support a finding that the Tenant, or A.B., have significantly interfered with the Landlord, or seriously jeopardized her health or safety or lawful right.

Additionally, I find the Landlord has failed to prove that the Tenant, or A.B. have put the Landlord's property at significant risk. The photos submitted by the Landlord also do not support her claim that the Tenant's have caused extraordinary damage or put the property at significant risk. I therefore find the Landlord has failed to meet the first part of the test in section 56.

Even in the event I am incorrect, I would have dismissed the Landlord's claim for an early end to tenancy as I find she has also failed to meet the second part of the test. As noted, the second part of the test requires me to consider whether it would be unreasonable or unfair to the landlord to wait for a one month notice to end tenancy to take effect. In this case the Landlord issued a 1 Month Notice on July 20, 2020. The Tenant applied to dispute the Notice and the hearing of that matter will conclude on December 10, 2020. As such, the earliest the Notice will take effect is December 10, 2020, approximately two weeks from the date of the hearing before me. I find that it is not unreasonable for the Landlord to wait to have a full hearing on the merits of the 1 Month Notice.



Having been unsuccessful in her Application, the Landlord is not entitled to recover the filing fee.

Conclusion

The Landlord's request for an early end to tenancy is dismissed. Her claim for recovery of the filing fee is similarly dismissed. The tenancy shall continue until ended 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 *Act*.

Dated: November 25, 2020

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Residential Tenancy Branch