



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1012 MAIN STREET HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

The tenant did not attend this hearing, which lasted approximately 11 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf.

This matter was filed as an expedited hearing under Rule 10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord filed this application on December 14, 2020 and a notice of hearing was issued by the RTB on December 21, 2020. The landlord was required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that she served the tenant with the landlord's application for dispute resolution hearing package on December 21, 2020, by way of posting to the tenant's rental unit door. The landlord provided a signed, witnessed proof of service for the posting. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on December 24, 2020, three days after its posting.

### Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy was continued by the landlord when it purchased the rental building in November 2013, as the tenant was already living there. The landlord does not know when the tenant first moved into the rental unit. No new written tenancy agreement was signed by the parties. Monthly rent in the current amount of \$481.00 is payable on the first day of each month. No security deposit was paid by the tenant. The tenant continues to reside in the rental unit.

The landlord stated the following facts. The tenant has been using pepper spray, which is illegal in this province, on the floor of the building on which he lives. Other occupants cannot breathe and their eyes water. The tenant used the pepper spray at the same time on three occasions, December 8, 10 and 11, 2020. Other occupants have called the police and the tenant has been targeting two occupants with the pepper spray. The landlord sent a warning letter to the tenant on December 14, 2020, that the landlord would apply for an expedited hearing. The landlord applied for this expedited hearing on December 14, 2020, and no other incidents by the tenant, have occurred since that date. No One Month Notice to End Tenancy for Cause ("1 Month Notice") was issued to the tenant by the landlord. The landlord cannot wait for a 1 Month Notice to take effect because it is responsible for other occupants and this is a pattern of behaviour, not a one-time occasion. The landlord submitted photographs of one of the units that was covered with pepper spray, and luckily that occupant was not in the unit at the time.

## Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (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;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, that the landlord was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlord did not issue a 1 Month Notice to the tenant. No incidents have occurred by the tenant since December 14, 2020, when the landlord issued a warning letter to the tenant and filed this application for an early end to tenancy.

The landlord did not go through any documentary evidence at this hearing, mentioning only photographs but not going through emails or other documents. The landlord was given ample time to present her case and was even questioned if she had any other information to provide.

The landlord did not produce any police reports or police officers to testify at this hearing. An email, dated December 19, 2020, provided by the landlord, from the police officer to the landlord's building manager, indicates that the officer spoke to the tenant, who denied using "bear spray," and the officer requested the landlord to provide surveillance videos, as "the only way to substantiate a charge of mischief," after receiving screenshots from the landlord. During the hearing, the landlord did not refer to this email or provide information as to whether any surveillance videos were provided to the police.

Accordingly, I dismiss the landlord's application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord's entire application is dismissed 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: January 04, 2021

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Residential Tenancy Branch