



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

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

- an early termination of tenancy and Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness V.G.

The landlord testified that this application for dispute resolution was posted on the tenant's door on December 24, 2020. The tenant testified that she received it on December 25, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an early termination of tenancy and Order of Possession, pursuant to section 56 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

## Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a basement suite in a house that has two other suites, one on the main floor and one of the top floor.

Both parties agree that the landlord served the tenant with a One Month Notice to End Tenancy in early December 2020 (the "One Month Notice"). The One Month Notice was entered into evidence.

The One Month Notice states the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The One Month Notice, under details of cause, states that the tenant is causing excessive noise late in the evening and night which prevents the other tenants from sleeping and the peaceful enjoyment of their rental properties.

The landlord testified that this application for dispute resolution was filed because the disturbances caused by the tenant escalated after the One Month Notice was served. The landlord testified that the other tenants do not feel safe coming and going from their suites because the tenant has become hostile and aggressive. The landlord testified that the basement controls the heat for the entire house and the tenant repeatedly turns the heat for the entire house off, leaving the other tenants without heat in the winter.

The tenant testified that the basement gets unreasonably hot and that she has had to turn off the heat so that she can breathe but has accidentally forgot to turn it back on, on several occasions. The tenant testified that since the landlord repaired the heating system, she has not turned the heat off. This was not disputed by the landlord.

Witness V.G. testified that she is the main floor tenant and that on December 12, 2020, the tenant swore at her on two occasions. Witness V.G. testified that on December 18, 2020 she emailed the landlord a list of disturbances caused by the tenant between December 12, 2020 and December 17, 2020. The landlord entered the above email into evidence. The email lists noise complaints, lack of heat and the police attending at the subject rental house looking for the tenant.

The landlord entered into evidence email complaints from witness V.G. regarding the tenant's noise, smoking, interference with the heat and parking.

The tenant testified that she has not been hostile or aggressive with the other tenants and has never sworn at the other tenants. The tenant testified that she suffers from night terrors and that this causes her to make disturbances at night.

The landlord testified that she is concerned about damage to the subject rental property and that the tenant made a hole in a door at the subject rental property. The tenant testified that her young daughter made the hole and that she has since replaced the door. This was not disputed by the landlord.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. 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.*

An early end of tenancy is an expedited and unusual remedy under the *Act* and is only available to the landlord when the circumstances of the tenancy are such that it is unreasonable for a landlord to wait for the effective date of a notice to end tenancy to take effect, such as a notice given under Section 47 of the *Act* for cause. At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice.

On this occasion I find that the landlord has not provided me with convincing evidence for ending the tenancy earlier than the notice already given to the tenant. While the actions of the tenant may support an Order of Possession based on a One Month Notice to End Tenancy for Cause, I find that the landlord has not proved that 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 of the *Act* to take effect. I find that the complaints described by the landlord and witness V.G. are not serious enough to deprive the tenant of the notice to end tenancy she is entitled to under section 47 of the *Act*. I therefore dismiss the landlords' application without leave to reapply.

As the landlord was unsuccessful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 47 of the *Act*.

### Conclusion

The landlord's 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