



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause].

The landlord, the landlord's agent/daughter (agent), the landlord's witness, the tenant and the tenant's wife attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed testimony and make submissions to me.

The parties were instructed they were not allowed to record the hearing and they affirmed that they were not recording the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

In terms of documentary and digital evidence, the landlord's application was made on March 3, 2021, and the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was provided to the landlord on March 10, 2021.

The landlord submitted some evidence with their application, but other documentary and digital evidence was submitted by the landlord after filing the application, including a witness statement filed the day before the hearing.

RTB Rule 10.2, which applies to this expedited hearing and states:

#### **10.2 Applicant's evidence for an expedited hearing**

An applicant **must submit all evidence that the applicant intends to rely on at the hearing with the Application** for Dispute Resolution.

[emphasis added]

Based on the above, I exclude all evidence from the landlord not filed with their application as this matter relates to an expedited hearing. Given the above, I have only considered the first documentary evidence package from the landlord and the tenant's evidence, as the landlord presented no objection to its inclusion.

Additionally, the landlord's witness, when re-entering the hearing, appeared confused as to what she should say. When the witness did begin to speak, she began testimony about events on January 18, 2021. I deemed this testimony to be cumulative to the testimony provided by the landlord and landlord's agent and therefore, I find it was not necessary.

### Issue(s) to be Decided

Has the landlord provided sufficient evidence to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act?

### Background and Evidence

In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity, and appropriateness of each party's evidence.

The principal and relevant aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord submitted a written tenancy agreement showing a tenancy start date of August 1, 2018, a fixed term through July 31, 2021, monthly rent of \$1,500, due on the 1<sup>st</sup> day of the month, and a security deposit of \$1,250 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

In their application, the landlord wrote that the tenant threatened to harm the landlord and come after the landlord, that he tried to hit my daughter on Jan 18th (his wife stopped him multiple times). The landlord also wrote that the tenant threatened to cause damages, after he told him he would be seeking compensation from the RTB. Further, the landlord submitted that the tenant has continued to harass him over texts, even after he told him multiple times to stop. The landlord wrote that he called the police twice so far, and he has been given a warning about his disturbing and inappropriate messages. Further, the tenant is very aggressive, violent and rude.

#### **Landlord's submissions in support of their application –**

Mostly through the testimony of his agent, RK, the landlord submitted the following:

- The tenant was trying to bully the landlord into extending the tenancy.
- The landlord is fearful of his safety and has called the police on the tenant.
- The police have advised the landlord to file for this expedited hearing.
- There was a heated argument and the tenant threatened to come after his family.
- There has been damage to the property.
- That the tenant told the landlord he was going to shoot him.
- The tenant tried to assault RK on January 18, 2020.
- On January 27, 2021, the tenant started to threaten the landlord's family through text messages.
- The tenant is emotionally abusing the landlord.
- The tenant keeps text messaging the landlord.

As a large part of landlord's and agent's testimony centered around events on January 18, 2021, the agent and landlord were questioned about recent events, leading up to the application for emergency relief on March 3, 2021, rather than historical events.

In response, RK said this application dealt with the tenant's breaches. I asked her to clarify, and the agent said the breaches related to the tenant installing a gas line into the rental unit, when it was all-electric and running a business out of the rental unit.

Included in the landlord's relevant evidence were short videos. The agent confirmed that these videos were taken January 18, 2021.

Further evidence sent with the landlord's application included a stream of undated text messages between the landlord and tenant, an article from a national newspaper, dated January 10, 2003, the tenant's profile on a social network site, and a 1 page written statement.

The testimony during the hearing indicated that the landlord has served the tenant a One Month Notice to End Tenancy for Cause (Notice), which the tenant has disputed through an application for dispute resolution. That hearing is set for April 29, 2021 and the Notice was dated January 22, 2021. The causes detailed on the Notice referred to breaches of the Act and tenancy agreement, a violation of a by-law and alleged damage to the rental unit.

### **Tenant's submissions in response to the landlord's application –**

The tenant's testimony included the following:

- The parties have signed a mutual agreement to end the tenancy, effective on July 31, 2021, the end of the fixed term on the written tenancy agreement.
- The reasons for any current issues is that the landlord wants to raise the rent by \$1,000 and wants the tenants to vacate earlier than the end of the fixed term.
- The allegation that he pushed the landlord's daughter or threatened the landlord is a blunt lie.
- The landlords did not report him to the police, rather it was the tenant who reported the landlords to the police, as their privacy was not being respected.
- He had permission from the landlord to install a gas line and he had a profession gas fitter do the installation.
- The landlord is harassing the tenants, acting in an aggressive manner and scaring his wife.
- The tenant questioned why the landlords say they are afraid of him when they keep coming to the rental unit for multiple inspections, in contravention of the law.

- He made improvements to the rental unit, with the landlord's permission, for which the landlord has yet to reimburse him.
- He is a law abiding citizen and he would never hurt anyone, rather, his career is to make people safer.

Included in the tenant's evidence were breach letters sent by the landlord, written responses to the landlord's written evidence, photographs, and dated text message communication between the parties.

### Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act states:

**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.**

[emphasis added]

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

...

*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).*

The onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord, the landlord's agent and the tenant provided completely opposite testimonies and documentary evidence regarding the events of this tenancy in recent

months, and beyond. While the landlord submitted that the police have been called, there was no documentary proof of the nature of the call-out.

The landlord's agent testified directly that this application was in response to the tenant's alleged breaches. The evidence is that the landlord has served the tenant with a One Month Notice to End Tenancy for Cause addressing those alleged breaches, and those matters are set for a hearing on the tenant's application for dispute resolution disputing the landlord's Notice. I do not find any of these alleged breaches are of an emergency nature.

I also have reviewed the videos taken by the landlord's agent and do not find that they showed any threat or aggression to the landlord's agent or the landlord. I find the landlord's agent actions that night were at least somewhat provoking. Apart from that, those videos were taken on January 18, 2021, according to the landlord's agent's testimony, and I find the events were too remote in time to compel the landlord to file this application for an expedited hearing. I therefore find that there was insufficient evidence of imminent danger to the health, safety, or security of a landlord.

Overall, I find the purpose of this application was to circumvent the process regarding the enforcement or cancellation of the One Month Notice to End Tenancy for Cause, in a hearing on April 29, 2021.

Therefore, **I dismiss** the landlord's application due to insufficient evidence, without leave to reapply.

The tenancy shall continue until ended in accordance with the Act.

### Conclusion

The landlord's application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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: March 31, 2021