



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### 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]; and
- to recover the cost of the filing fee.

The landlord, the tenant and the tenant's assistant 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-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

### 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 did not prepare a written tenancy agreement, but said at the hearing that the single room occupancy tenancy began on January 3, 2021, monthly rent was \$600 and the tenant paid a security deposit of \$300. The rental unit is on the upper floor of a home shared with at least one other tenant and the main floor is occupied by the landlord's family.

To support her application, the landlord said that the tenant has harassed another tenant and the other tenant feels uncomfortable around this tenant. The landlord said the tenant has uncontrollable anger due to a brain injury. In response to my inquiry, the landlord referred to a text message about a threat made to the other tenant by this tenant, dated February 2, 2021.

The landlord said that she and her family members feel threatened by the tenant because of their nationality and do not feel safe.

The landlord said that she has received complaints from her family members occupying the lower floor that the tenant is making excessive noise. This resulted in cautions to the tenant.

The landlord said the tenant has caused an ant problem by leaving a glove with food by the door and that he sometimes dumps food in the toilet and forgets to flush.

In her application, the landlord wrote that the tenant has said some bad things that made her worry about the other tenants.

Although the landlord referred to police call-outs, they were due to noise complaints.

Although the landlord made several references to unpaid or late rent, the landlord was informed that matter was not relevant to this expedited application.

The landlord's relevant evidence included copies of text messages.

The testimony during the hearing indicated that the landlord has served the tenant at least one One Month Notice to End Tenancy for Cause (One Month Notice), which appears to have been disputed by the tenant through an application for dispute resolution and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), which appears to have been disputed by the tenant through an application for dispute resolution.

The landlord has also filed an application for dispute resolution seeking enforcement of a One Month Notice to End Tenancy for Cause. The hearings on the parties' four applications have been set for a single hearing on May 20, 2021.

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

The tenant said that a lot of statements by the landlord were not true. The tenant, however, confirmed that he did speak to the other tenant and kept knocking on his door when he first arrived, as he was excited to meet someone else. The tenant said that he stopped knocking when he was told about the issue.

The tenant admitted he got mad when the other tenant left the shower nozzle in the up position, as he almost slipped in the tub.

The tenant said he does not interact with the other tenants anymore and that all he does is wash his dishes, go to the bathroom, and go to his room.

## 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 and the tenant provided opposite testimony regarding the events of this tenancy.

The landlord testified directly that this application was in response to the tenant's alleged threats to the other tenant. The landlord, however, cited a text message sent February 2, 2021, as the most recent occurrence.

This evidence shows that the alleged threat was not serious enough to file for an order ending the tenancy early and on an expedited basis, as the landlord's application was not made until March 18, 2021. I therefore find that there was insufficient evidence of

imminent danger to the health, safety, or security of a landlord or another tenant or occupant.

Additionally, I find the primary evidence of the landlord dealt with issues such as noise complaints, ant problems, or late rent, which are more appropriately addressed in a One Month Notice or a 10 Day Notice, both of which have been issued by the landlord to the tenant.

Overall, I find the purpose of this application was to circumvent the process regarding the enforcement or cancellation of the One Month Notice or the 10 Day Notice for Unpaid Rent or Utilities, set for a hearing on May 20, 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.

The landlord was informed at the hearing of the requirements of section 13(1) of the Residential Tenancy Act (Act). The Act states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

### 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: April 16, 2021

---

Residential Tenancy Branch