



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding New Vista Society  
and [tenant name uppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by TH. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record the hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy and order of possession?
2. an authorization to recover the filing fee?

## Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on August 01, 2012. Monthly rent in the amount of \$562.00 is due on the first day of the month. The landlord holds the security deposit of \$270.00.

The landlord affirmed on May 12, 2021 the tenant verbally and physically assaulted tenant LI. The landlord does not know if the tenant initiated the physical assault. Tenant LI needed medical care. The police attended the rental unit and served documents to the tenant. The landlord stated the tenant had arguments with tenant LI before the May 12, 2021 incident.

The tenant testified he had an altercation with tenant LI on May 12, 2021 and LI initiated the physical assault by pushing him. The tenant pushed back LI, both parties fell and slapped each other, but the tenant did not punch LI. The tenant said the police are investigating this incident and he was not charged. The tenant affirmed this was his only incident in the 9-year tenancy.

## Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Section 56 (2) of the Act states:

(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.

Residential Tenancy Branch Policy Guideline 51 explains the importance of the landlord providing evidence that it is unreasonable or unfair to wait to end the tenancy with a one month notice:

**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.

(emphasis added)

Based on the tenant's convincing testimony, I find the tenant had an altercation with tenant LI on May 12, 2021 but did not initiate the physical assault. I find the tenant's actions are not serious and urgent enough to end the tenancy pursuant to section 56 of the Act. I further find it is not unreasonable or unfair to the landlord to wait for a notice to end tenancy under section 47 of the Act.

The landlord has failed to provide examples of the tenant's behaviour to support and order of possession under section 56 of the Act.

Therefore, I dismiss the landlord's application for an early end to the tenancy pursuant to section 56(2) of the Act.

As the landlord is not successful in this application, the landlord must bear the cost of her filing fee.

### Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues 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 *Residential Tenancy Act*.

Dated: June 22, 2021

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Residential Tenancy Branch