



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on June 10, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord's Agent E.S. and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence package. As such, I find that these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenant confirmed that she did not submit any documentary evidence in response to this Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified that the tenancy began on September 25, 2020. Currently, the Tenant is required to pay rent in the amount of \$8,333.33 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$4,166.67 which the Landlord continues to hold.

The Landlord's Agent stated that the Landlord is seeking to end the tenancy early for several reasons;

The Landlord's Agent stated that the Tenant and her guests have generated frequent noise complaints at the rental unit which began in October 30, 2020. The Landlord's Agent also stated that the Tenant has held gatherings in the rental unit which contradicted the Covid-19 regulations.

The Landlord's Agent stated that on November 13, 2020 the Tenant or their cleaner emptied a bucket of water off the 18<sup>th</sup> floor of the building, which resulted in water falling on every balcony below. The Tenant stated that she was not advised on the regulation surrounding cleaning protocols.

The Landlord's Agent stated that in April 2021 the Tenant's child was in the pool making inappropriate gestures to others using the pool facilities. Furthermore, the Landlord's Agent stated that the Tenant or their guest left fecal matter in the steam room and washroom area. The Tenant stated that her elderly father fell in the steam room. The Landlord's Agent stated that the Tenant did not report the incident.

The Landlord's Agent stated that on April 15, 2021 the Tenant's son threw cutlery a plate and cup over the 18<sup>th</sup> floor balcony, which posed a risk to anyone that may have been standing below.

The Landlord's Agent stated that the Tenant has been warned on several occasions and has incurred over \$5,000.00 in strata fines, however, the Tenant continues to violate Strata regulations. Furthermore, the Tenant has not paid rent for July 2021. As such, the Landlord is seeking to end the tenancy early.

### Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

*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...*

*(a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.***

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

During the hearing, the Landlord's Agent outlined several concerns surrounding noise violations, a party despite Covid-19 restrictions being in place, inappropriate gesture, misuse of the balcony (cleaning, throwing items), and unsanitary use of the steam room facilities. While the Tenant's actions may contradict the tenancy agreement and the Act, based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect.

I find that the Landlord failed to take immediate action following anyone of the incidents nor have they provided sufficient evidence that this tenancy should end pursuant to Section 56 of the Act. In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has provided insufficient evidence to prove that the tenancy should end early under section 56. The tenancy will continue until ended 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: July 13, 2021

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Residential Tenancy Branch