



# Dispute Resolution Services

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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 end to this tenancy and an order of possession pursuant to section 56;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing with the assistance of his translator/agent, M.L. and a witness, L.J. The tenant did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on August 17, 2021. I accept the landlord's undisputed affirmed testimony and find that the tenant despite not attending the hearing is deemed served as per section 71 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an early end to the tenancy and an order of possession?  
Is the landlord entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an early end to the tenancy and an order of possession. The landlord stated that this is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord. The landlord provided a written description which states,

*I am the owner of the property at... I rent my basement to C.R. for 3 months he has not pay me, also, I have had complaints from my neighbors and other tenants of his C. bad behaviour, currently outside the unit (patio). He has two refrigerators that give off a very ugly smell, in addition with other things. I feel like my life is in danger every time I try to talk to him, once I had to call police because his bad behaviour, file number 380090.*

The landlord clarified during the hearing with the assistance of his translator/agent that the witness, L.J. was not a witness but could provide direct testimony of events that were told to her after the fact. The landlord and his witness were advised that the witness in fact did not witness anything, but only had third hand knowledge of the events and as such was considered hearsay.

The landlord stated that the tenant had threatened and assaulted another tenant/victim in the rental property. The landlord stated that the tenant/victim was not willing to be a witness nor provide any statements. The landlord stated that the tenant was subject to a police restriction, but was unable to provide a copy of the order. The landlord repeatedly argued that he had provided the police case file numbers as evidence. The landlord was advised that the Police File Numbers were of no further assistance in his claim.

I also note that during the hearing the landlord confirmed that a 1 month notice to end tenancy had been served to the tenant prior to this incident.

### Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord's property;
  - 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
  - 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.

In addition to showing at least one of the above-noted causes, the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a 1 Month Notice to take effect.

A one month notice to end tenancy for cause is the standard method of ending a tenancy for cause. An order to end tenancy early pursuant to section 56 requires that there be particular circumstances that lend urgency to the cause for ending the tenancy. That is the reason for the requirement that the landlord show it would be "unreasonable or unfair" to wait for a cause notice to take effect.

In this case, I accept the undisputed affirmed testimony of the landlord and find that the landlord has failed to provide sufficient evidence of a severe and immediate risk to the rental property, other occupants or the landlord. The landlord relied upon the hearsay evidence of a third party that was not a witness to the incident. The landlord stated that the tenant/victim was unwilling to be a witness or provide a witness statement. The landlord was unable to locate and obtain a copy of the restriction issued by the police.

### Conclusion

The landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: September 10, 2021