



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sanford Housing Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET

### Introduction

This hearing was convened in response to an application by the Landlord for an early end to the tenancy and an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Would it be unreasonable or unfair to the Landlord to have served a notice to end tenancy for cause instead of seeking the extraordinary measure of ending the tenancy early?

Is the Landlord entitled to an order of possession?

### Background and Evidence

The following are agreed facts: the tenancy started on July 19, 2013. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit and \$100.00 as a pet deposit. Rent of \$375.00 is payable on the first day of each month.

The Landlord states that in the fall of 2020 the Tenant caused damage by putting kitty litter in the toilet. The Landlord states that repairs costing \$5,500.00 were incurred to repair plumbing and some drywall damage in the unit as a result of the Tenant’s action.

The Landlord states that the Tenant was warned not to place kitty litter in the toilet and the Tenant agreed to discontinue the practice.

The Tenant states that the Tenant never saw any costs for the repairs done in 2020 and does not believe that the costs could be that high as it was only a snake issue. The Tenant states that the Tenant did not know that kitty litter would cause any problem and that this was not done intentionally. The Tenant states that after this warning it did not put kitty litter down the drain.

The Landlord states that on July 28, 2021 a tenant from the unit directly below the Tenant reported a leak from their bathroom ceiling. The Landlord states that they went to inspect the Tenant's unit for the source of the leak and was refused entry, despite the Tenant being informed that it was an emergency. The Landlord states that the leak did not stop. The Landlord states that on August 10, 2021, after having given the Tenant a notice of entry, the Landlord returned to the Tenant's unit and was given access. The Landlord states that a restoration company attended with the Landlord on the same date and did an inspection finding contaminated water on the floor of the Tenant's bathroom. The Landlord states that the Tenant had removed the floor drain and toilet seal putting kitty litter down the drain. The water leaking into the lower unit was found to be contaminated. The Landlord provides a copy of the report from the restoration company and states that this report suggests that it is not safe to be exposed to this water. The Landlord states that repairs were made to the lower unit by patching the ceiling in that unit. The Landlord states that the Tenant's drains were snaked, and kitty litter was removed. The Landlord states that there is some damage between the floors of the unit that has yet to be repaired as the Tenant has refused entry but that since August 10, 2021 there have been no further problems. The Landlord is not certain whether the Landlord requested any entries after August 10, 2021 but believes such a notice was given for a day or two after August 10, 2021. The Landlord does not know if the Landlord or its agents went to the unit or gave notice to enter the unit after August 10, 2021.

The Tenant states that repairs and patches were made to the drain as the company thought that there was a leak from the drain. The Tenant states that the Landlord has not sought entry either as an emergency or with a notice of entry since August 10, 2021. The Tenant states that prior to August 10, 2021 the Tenant had refused entry without a notice of entry. The Tenant states that also prior to August 10, 2021 and when the Tenant took a shower water would leak to the lower unit. The Tenant states that it was informed by workers at the building of the leaks and that the Landlord made 2 or three inspections and repairs for these reports for which the Tenant allowed entry. The Tenant states that on July 28, 2021 the Landlord entered the unit but made no repairs and only took photos.

The Landlord confirms that on July 28, 2021 the Tenant's unit was inspected but no repairs were made to the unit and that the Landlord does not have the inspection report from that date. The Landlord states that between August 10, 2021 and the date of its application on August 30, 2021 there were no further issues and no further inspections. The Landlord states that they could not wait to serve the Tenant with a one month notice to end tenancy for cause because they believe that the Tenant will continue its practice of putting kitty litter down the drain, that the water leaks to date are dangerous to the health and safety of the lower tenant and that the Landlord has to regularly deal with unsafe water. The Landlord clarifies that the leaks occurred twice including the August 10, 2021 leak. The Landlord confirms that the Tenant has reported shower leaks in the past and around July 28, 2021 and that the Landlord followed up the complaints on July 28, 2021 with entry granted on that date by the Tenant.

### Analysis

Section 56(2) of the Act provides that 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.

There is evidence to support that the Tenant acted to cause damage to the plumbing on two occasions over approximately a year apart. I do note the evidence of the Tenant reporting issues with the shower drain prior to the leak in July 2021 and a somewhat later response by the Landlord to investigate the issue. There is no evidence to show that the shower drain issues were related or contributed to the leak. There is undisputed evidence that the Tenant denied entry to the Landlord to respond to the leak however the evidence of the Landlord's subsequent delay in providing the Tenant a notice for entry to investigate the leak or make repairs to a leak does not indicate an immediate and severe risk after this initial refusal. It is undisputed that upon entry the repairs were made to stop any danger from the water leak and there have been no

further issues after the repairs. The Landlord's evidence of seeking further entries is vague and given the Tenant's clear evidence of no requests for entries I find that the Landlord has not made any other requests for entry to make remaining repairs and that the remaining repairs are not evidence of a severe and immediate risk. As there is no evidence of any attempts by the Tenant to cause any further damage or impede any further repairs to and past the date of the Landlord's application for this extraordinary measure, and as I do not consider a possible risk of future similar acts by the Tenant to be evidence of an immediate and serious risk, I find on a balance of probabilities that the Landlord has not shown that it would be unfair or unreasonable to have waited for a notice to end tenancy for cause to be served on the Tenant. I therefore dismiss the claim for an early end to the tenancy and an order of possession.

#### Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 1, 2021

---

Residential Tenancy Branch