



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

The Landlord applies for the early termination of a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “Act”) and for return of their filing fee pursuant to s. 72.

Y.Z. appeared on her own behalf as Landlord. M.L. attended as assistant to the Landlord and provided no evidence. The Tenant did not appear, nor did anyone appear on behalf of the Tenant. In accordance with Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 1:30 PM on October 26, 2021. Pursuant to Rule 7.3, the hearing was conducted without participation of the Tenant as they failed to attend the hearing.

The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing.

The Landlord confirmed serving the Tenant with the Notice of Dispute Resolution and evidence by way of posting it to the Tenant’s door on October 7, 2021. Proof of service form RTB-9 was provided as evidence by the Landlord verifying the day and method of service. The Landlord further indicated that she emailed Notice of Dispute Resolution and evidence to the Tenant on October 7, 2021 as well. I find that Notice of Dispute Resolution and the Landlord’s evidence were served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have been served with the Landlord’s application materials on October 10, 2021.

### Preliminary Issue – Amending the Style of Cause

At the outset of the hearing, the Landlord advised that her name as listed within the Notice of Dispute Resolution was incorrect and that her name was accurately reflected

within the documents she submitted as evidence. Pursuant to Rule 4.2, I amend the application such that it accurately reflects the spelling for the Landlord's name as listed within the tenancy agreement.

Issue(s) to be Decided

- 1) Whether the tenancy should end early and without notice pursuant to s. 56?
- 2) Is the Landlord entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord advised that the tenancy started on March 5, 2021. The rental unit is located within a single-family home in which there is a main floor and basement rental unit. The Tenant occupies the basement rental unit. Rent is payable in the amount \$1,600.00 on the first day of each month. The Landlord confirmed holding a security deposit of \$800.00 and a pet damage deposit of \$800.00 in trust for the Tenant. A written copy of the tenancy agreement was submitted into evidence confirming the details of the tenancy.

The Landlord advises of a set of complaints regarding the Tenant from the other occupants of the residential property. The other occupants indicate in an email and letter that the Tenant smokes tobacco and cannabis in their rental unit. They indicate that the smell of the smoke is bothersome.

The Landlord advises that she herself smelt the smoke in July 2021 and indicates that she reminded the Tenant, at that time, that the tenancy agreement prohibited smoking within the rental unit.

Further complaints surround noise complaints from the other occupants, namely that the Tenant is loud, yells, and plays loud music. Based on the evidence provided by the Landlord, the noise complaints appear to have started on or about September 26, 2021.

There are also issues of unpaid rent and repeated late rent, which is the subject of various Notices to End Tenancy submitted into evidence by the Landlord. These notices are not relevant to the Landlord's present application.

The occupants of the main floor rental unit provided the Landlord a letter which was received by the Landlord on or about October 2, 2021. In it, they detail the disturbances they say are from the Tenant. Notably, the letter states the following:

We want to make it clear. We don't think [the Tenant] is a bad person. He has been exceedingly nice to us when we communicate directly with him. That has made it hard to reach out to anyone. But these problems have been consistent and, recently, very excessive. That is why we decided to reach out with our concerns.

The Landlord further indicates that the Tenant has grown cannabis in a greenhouse in the backyard.

The Landlord further advised that the police had recently attended the residential property on October 24, 2021 after being called by a would-be buyer of the greenhouse. The Landlord indicates that the backyard greenhouse is owned by her and that the Tenant had sold it to someone else. The Landlord was informed by a neighbouring property owner that someone was hauling away her greenhouse, which prompted her to attend the residential property. The Landlord advised the buyer that she owned the greenhouse and that the Tenant was not authorized to sell it. The buyer then called the police.

The Landlord advises that the police conducted a search of the property and found cocaine and cannabis, which the Landlord says belongs to the Tenant. The Landlord further states that police told her that the Tenant was known to them as a drug user.

### Analysis

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- put the landlord's property at 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; or
- caused extraordinary damage to the residential property.

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between these sections of the act is that under s. 56 no notice is given to end the tenancy on the basis that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline 51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

The present circumstances do not rise to the level such that it would be unreasonable or unfair to the Landlord or the other occupants to wait for a One-Month Notice to End Tenancy issued under s. 47 to take effect. I note that the issue of smoking within the rental unit was known by the Landlord by July 2021. Despite this, the Landlord only brought the present application on October 2, 2021.

I would emphasize that granting an order for possession pursuant to s. 56 is an extraordinary remedy contemplates circumstances which are of a significant and imminent nature. The noise complaints by the other occupants, though evidence of disturbance to their quiet enjoyment, are not extraordinary in nature. I would further note that the other occupants' letter of October 2, 2021 that the Tenant has been "exceedingly nice" to them. These types of issues are properly addressed by the standard process under s. 47.

The consumption of drugs by a tenant, whether legal (cannabis) or illegal (cocaine), is not generally a basis for early termination under s. 56. Here the evidence is thin and not of a concerning nature. The growth of cannabis in the greenhouse may very well be legal depending on the number of plants being grown. Again, there is insufficient evidence to show that any illegal activity took place and whether this would rise to a

level to justify ending a tenancy without issuing a Notice to End Tenancy and following the process under s. 47.

The most significant aspect, that of the potential theft and sale of the greenhouse, does not in my view justify ending a tenancy without notice to the Tenant. The evidence presented on this topic was sparse and limited to the Landlord's oral submissions. As Policy Guideline 51 makes clear, the breach must be very serious and requires sufficient supporting evidence. There is no police file, statements, or other supporting evidence on the incident that took place on October 24, 2021.

I find that the Landlord has failed to demonstrate that it would be unreasonable or unfair to the Landlord or the other occupants to wait for a notice issued under s. 47 to take effect. I further find that the present application appears to be closely linked to the issue of unpaid rent, which is not a basis for ending a tenancy under s. 56. Accordingly, the Landlord's application is dismissed.

### Conclusion

I dismiss the Landlord's application for the early termination of the tenancy pursuant to s. 56 without leave to reapply. As the Landlord was unsuccessful in their application, they are not entitled to return of their filing fee.

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: October 27, 2021

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Residential Tenancy Branch