



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ET, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Recovery of the filing fee from the opposing party pursuant to section 72.

The landlord KT attended the hearing as did both tenants. The tenant KB ("tenant") testified that she received the landlord's Notice of Expedited Hearing on September 15, 2021. The landlord testified that when the notice was provided to him by email, he was out of the country and was unable to serve the tenants with the notice and the evidence until he arrived back in the country. Despite this, the tenant testified she was satisfied with when she received the landlord's Notice of Expedited Hearing and stated she had no issues with timeliness.

The landlord testified he received the tenant's evidence but was unable to read much of it, since the evidence consisted mostly of text messages. The tenant's texts, in blue, were unreadable due to the small size of the texts. I advised the parties that if the tenant were to refer me to any of the texts during testimony, those texts were to be read out loud so that each party could understand the exact wording of the texts. I note that during the hearing, however, none of the texts supplied by the tenant were referred to by the tenant.

Issue(s) to be Decided

Can the landlord show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is the lower unit of a house with an upper and lower unit. The upper unit is occupied by another tenant not involved in this proceeding.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on April 1, 2021 with rent set at \$1,800.00 per month, later reduced to \$1,550.00 per month by mutual agreement. A security deposit of \$900.00 and a \$450.00 pet damage deposit was collected by the landlord which he continues to hold.

The landlord gave the following testimony. When the tenants applied for a tenancy, they told the landlord that they were non-smokers. The landlord advised the tenants that the occupants of the suite upstairs have a two-year-old child who would make noise, as any two-year-old would. The tenants accepted the tenancy as such.

On June 21<sup>st</sup>, the landlord discussed the issue of smoking cannabis in the rental unit after receiving complaints. He told the tenants that this is not allowed in the unit and that they don't want it happening in their rental unit. Later that day, a smoking addendum was presented to the tenants to sign. The tenants refused, saying signing it would amount to an admission that they were smoking cannabis, which they denied.

The landlord's daughter found out she was accepted to attend nursing school at a nearby university the following day, on June 22<sup>nd</sup>. The landlord then served the tenants

with a Two Month's Notice to End Tenancy for Landlord's Use with an effective date of August 31<sup>st</sup>. The landlord testified he was originally going to serve the tenants with a One Month Notice to End Tenancy for Cause however he decided to serve the tenants with the 2-month notice to give the tenants a fair chance at finding a new rental or purchase their own property.

The landlord alleges other reasons for ending the tenancy early, such as finding a rag stuffed in the vent of the upstairs unit's dryer. The landlord acknowledges that the only evidence of this is a photo of the rag on the ground provided to him by the upstairs unit. After the rag was pulled out, the upper unit's dryer began working. The landlord alleges further incidences where the tenant has left garbage out where it attracts bears; and the upstairs unit's air conditioning was inoperative due to possible tampering by the tenants during a heat wave in June.

The landlord also testified that the relationship between the upstairs occupant and the tenants in this hearing has deteriorated. Each party calls the police, bylaw officers, the SPCA and child welfare services on one another at all times of the day. The landlord states the complaints between the two are almost daily and there is a heightened risk of confrontation as these tenants must pass by the upstairs occupant's front door to access their unit. The landlord testified he believes a blow out or a fight between the two parties will eventually ensue.

The landlord states the neighbours are concerned about the disturbances coming from the house and referred me to an unsigned letter dated August 12<sup>th</sup> purported to be drafted by 3 sets of neighbours. The letter does not specify which occupants of the rental house are misbehaving, the upper unit tenants or the lower unit tenants.

The tenant gave the following testimony. The letter from the neighbours is vague. The reason garbage was left out was because the upstairs occupant does not give her access to the garbage bins. The tenant is forced to make weekly trips to the dump to dispose of her garbage, even though garbage collection is included in the tenancy agreement. The tenant disputes the allegation that she put a rag in the upstairs occupant's dryer vent, stating there is little evidence of them doing so. Regarding the inoperative air conditioner, there is no way the tenant could stop it from working from their location and the tenant's spouse, an air conditioner technician, was prepared to give testimony as to the reasons why it would be impossible.

The tenants deny the landlord's accusation that they smoke cannabis in the unit. The tenant questions why she would do so when she has children of her own living in the same space. She acknowledges there is a single cannabis plant being grown in the unit

however states that doing so is legal and that the cannabis can be used for multiple purposes including making salves and lotions.

The tenant acknowledges the relationship between her and the upstairs occupant is poor. The tenant alleges the landlord has done nothing to prevent the upstairs occupant from complaining about her and making false accusations to the authorities. The landlord rebutted this allegation, stating that he spent over \$4,500.00 soundproofing the two units, put the tenant in a hotel while doing the renovations and paid for housekeepers to clean the tenant's unit after the tenant complained about dust following the renovation.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that 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, **and**

**it would be unreasonable, or unfair to the landlord, the tenant 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 PG-51 [Expedited Hearings] provides further clarification at part B:

... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)

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).

I find the landlord has not provided sufficient supporting evidence to satisfy me the tenants breached any term of the tenancy agreement or the *Act* seriously enough to justify the extraordinary measure of ending the tenancy early. The landlord has provided a small sample of accusations to portray what he depicts as an unreasonable disturbance to other occupants of the residential property. While the evidence provided might possibly justify the issuance of a One Month to End Tenancy for Cause pursuant to section 47; the landlord has not satisfied me that it would be unreasonable to wait for a One Month Notice to take effect. I do not find there is any **imminent** danger to the health, safety or security of the landlord or another occupant of the house. I do not accept the landlord's assertion that there is a potential for violence based on the bad relationship between the two units as no violence attributed to the tenant or her spouse was ever alleged in the landlord's testimony. Likewise, while smoking cannabis in the house may affect the health of the occupants residing there, the landlord did not direct my attention to any documentary evidence to substantiate the allegation that the tenants ever did so. Throughout the hearing, the tenant denied cannabis was ever smoked in the rental unit.

An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect or be considered by way of an application for dispute resolution. I do not find the landlord has shown it would be unreasonable or unfair to proceed in this manner.

Under the circumstances, I find it would be reasonable for the landlord to serve the tenant with a One Month Notice to End Tenancy for Cause pursuant to section 47, should he choose to do so. After being served with the Notice, the tenant may either dispute the notice in accordance with section 47(4) or accept the tenancy ends on the effective date of the notice.

Accordingly, the landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

#### Conclusion

The landlord's application for an early end to tenancy pursuant to section 56 of the *Act* is dismissed.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

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 04, 2021

---

Residential Tenancy Branch