



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **ET, FFL**

### **Introduction**

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an early termination of a tenancy pursuant to section 56 because the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord.

The tenant attended the hearing. The landlord attended the hearing, represented by her son/agent, EY ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's notice of expedited hearing and evidence. The landlord acknowledged service of the tenant's evidence however pointed out that it was received at 11:00 p.m. on October 20<sup>th</sup>, two (2) days prior to the hearing. The evidence was served via a social media account and some of the tenant's evidence was unreadable due to low resolution.

I determined that the legible documents are deemed served in accordance with rule 10.5, pursuant to section 71 of the *Act*. The tenant's illegible evidence, a one-page written statement drafted by the tenant, would not be allowed in as a document to be considered, however the tenant would be permitted to read that document into the record.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was made without the director's authorization and used for any purpose, the recording party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to show the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?

Can the landlord recover the filing fee?

Background and 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 the tenants' claim and my findings around each are set out below.

The landlord gave the following testimony. The rental unit is room in a duplex that is occupied by multiple tenants sharing a kitchen facility and bathroom. The tenant lives in the lower unit with four (4) other occupants. The upper unit has a separate address, but is part of the same residential property.

The landlord testified that the tenant and another occupant living alongside him got into an argument leading to a physical assault. The police were called and this was not the first incident of the tenant causing a disturbance. The landlord states that the other occupants do not feel safe living alongside this tenant. The tenant told the co-occupant to go back to his own country, disrespecting the co-occupant.

The landlord served the tenant with a One Month Notice to End Tenancy for Cause and a copy of the notice was provided as evidence by the landlord. The effective date on the notice is October 31<sup>st</sup> and the tenant has paid rent for the month of October. The landlord testified that while living in the rental unit, the tenant has been making life difficult for his co-occupants. The tenant has had friends stay over without consulting the co-occupants and had parties where the guests don't wear masks during the pandemic. The landlord testified that the music and noise from the parties has disturbed occupants living in the upper unit of the duplex and one of the occupants in that neighbouring unit provided a statement saying the tenant held a party at the patio in front of his room until 1:30 in the morning and argued with that occupant when he asked the partygoers to move downstairs.

The landlord testified that subsequent to the tenant holding parties, the landlord added an addendum to the tenancy agreement saying there are to be no parties.

The tenant gave the following testimony. Reading from his prepared statement, the tenant stated that on July 1, 2021, the tenant confronted his co-occupant, ("T") about taking the tenant's food without permission. T told the tenant he could do so because the tenant was "weak" because of his ancestry. The tenant acknowledges telling T to go back to his own country on July 24<sup>th</sup>, however that was said because T was being hateful towards him.

The tenant testified T assaulted him on July 30<sup>th</sup> when T grabbed his head, gashed his forehead and gouged his eyes. The tenant goes on to say that in self-defence, he punched T in the jaw, pushed T out of his doorway and escaped from T. T called the police regarding a noise complaint afterwards.

The tenant disputes he held a party with strangers saying he took part in a barbecue with 6 other residents of the house and four others on August 1<sup>st</sup>. He argued with the complaining occupant of the upstairs duplex unit but then turned down the volume of the music and had the guests quiet down after the complaint.

The tenant drew my attention to a document he alleges was drafted by T on October 20<sup>th</sup> which states, *"I do not think that he makes the house unsafe, nor do I think he should be kicked out of the house...Our physical altercation was an isolated incident, and I have no fear that it will happen again."* The tenant testified that T signed the letter himself and the tenant witnessed T signing it. The tenant testified it was signed using a touch screen device.

The landlord contradicts the legitimacy of the letter saying he spoke with T immediately after receiving this piece of evidence from the tenant. According to the landlord, T was very concerned that his signature was forged. The landlord testified he has texts from T saying *"What is this letter, I never wrote it – can you tell me who did it"*. The landlord has record of T calling him several times saying he never signed such a letter. The landlord asked me to compare the signature T's written statement dated August 16, 2021 where T alleges a verbal attack by the tenant on July 24<sup>th</sup> and a physical attack on July 30<sup>th</sup>. T's signature is completely different from the piece of evidence submitted by the tenant where the signature appears to state the name "MWAMBA". The tenant testified that is an alias used by T.

### 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).*

In this case, the landlord provided a letter from T that states he was verbally assaulted and physically assaulted by the tenant. T does not provide any description of his injuries or provide any context to the events that led up to the altercation. For this hearing, the landlord did not provide any photographs of T's injuries, police reports to provide context or testimony from witnesses to verify what had happened. I am left with the landlord's description of the only example of possible violence committed by the tenant to make my decision. I note that the landlord giving testimony did not witness the event.

With respect to the letter allegedly drafted by T on October 20<sup>th</sup>, submitted by the tenant, I do not find the letter to be credible or reliable as evidence. I find that, on a balance of probabilities, the letter was not signed by T, as it's contents entirely contradict the letter dated August 16, 2021 provided as evidence by the landlord. I find the signature on the letter submitted by the tenant does not appear to be T's, as it is clearly signed by MWAMBA. I do not accept the tenant's reasoning that T uses the alias of MWAMBA, given the lack of any evidence to support this statement.

Despite this, I find the landlord has failed to provide sufficient evidence to satisfy me the tenant committed any breaches of the *Act*, regulations or tenancy agreement that are serious enough to justify an early end to the tenancy. Ending a tenancy by seeking an early end to tenancy under section 56 of the *Act* is an extraordinary measure, reserved for the most serious breaches of the *Act* where there is an **imminent** danger to the health, safety or security of another tenant or the landlord. I find the landlord has provided insufficient evidence to establish that this is the case.

Playing music that may disturb others, having guests over and being noisy would be expected in a dwelling consisting of five (5) unrelated co-occupants and multiple more co-occupants living in the same situation right above. While the landlord would like the co-occupants to be respectful and courteous to one another, I find such an expectation to be unreasonable, given the multitude of people living there. To seek an early end to the tenancy for any of the co-occupants without first providing them written notice or serving a notice to end tenancy would be contrary to the provisions of the *Residential Tenancy Act*.

The second requirement to seek an early end to tenancy is for the landlord to satisfy me that 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. In the case before me, I find the landlord has failed to establish that waiting for the one month notice to end tenancy, ending the tenancy on October 31<sup>st</sup>, should not take its course. As stated earlier, although the landlord states they fear something may happen if the tenant does not leave, I am not satisfied there is **an imminent threat** to the health, safety or security of the landlord, the tenant or other occupants of the rental unit.

Under the circumstances, I find it would be reasonable for the landlord to wait to have the merits of the One Month Notice to End Tenancy for Cause heard at the tenant's dispute resolution hearing. As such, the landlord's application for an early end to the tenancy pursuant to section 56 is dismissed without leave to reapply.

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.

#### Conclusion

The landlord's application is dismissed without leave to reapply.

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 25, 2021

---

Residential Tenancy Branch