



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunshine Investments Inc. and [tenant name  
suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:57 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent CO (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on October 14, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on October 19, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of the tenancy?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on June 17, 2016. Monthly rent is \$640.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$320.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord applied on October 07, 2021 to end the tenancy early under section 56 of the Act. The landlord stated:

The tenant has twice brought a large individual, [redacted for privacy], into the building and has wrongfully threatened the neighbours on both sides of his suite (i.e. [redacted for privacy]). We served him 30 day eviction on August 27th 2021, eviction notice and proof of service are attached. He should have vacated the suite September 30th. Sorry, I've tried to find where to change this request to an Order of Possession but can't find this option, maybe because we don't have a dispute file number? Please help

The landlord stated the tenant has been threatening other tenants in the rental building since February 2021.

On August 14, 2021 tenant DA called the police because the tenant told DA that he has a firearm and they had an altercation. The police attended and found ammunition on DA's balcony. DA believes that the tenant placed the ammunition on his balcony.

On August 20, 2021 the tenant had an altercation with tenant TE and spat on his face. A friend of the tenant (BR) threatened tenant TE: "You are going down". The police attended the rental building and warned the tenant and BR.

On August 24, 2021 the tenant yelled at the landlord: "Do your fucking job", "You are a useless piece of shit" and "I'm done with you".

The landlord served a one month notice to end tenancy for cause (the Notice) to the tenant on August 27, 2021. A copy of the Notice was submitted into evidence. The details of the events list the three August 2021 incidents above mentioned.

The landlord received complaints against the tenant on September 02 and 14, 2021. On both dates the tenant was yelling and threatening his ex-wife.

On September 29, 2021 the tenant saw the landlord in the parking lot and yelled at her: "You are full of shit".

### Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Section 56 (2) of the Act states:

(2)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.

Residential Tenancy Branch Policy Guideline 51 explains the importance of landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

**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).**

**Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:**

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Based on the Notice, I find the landlord served the tenant the Notice because of several incidents, including the August 2021 incidents. I find it would not be unreasonable or unfair for the landlord and other occupants to wait for a one month notice to end

tenancy, as the landlord issued a one month notice to end tenancy because of the August 2021 incidents. The August 2021 incidents cannot justify an order to end the tenancy under section 56 of the Act.

Based on the landlord's testimony, I find the tenant threatened his ex-wife on September 02 and 14, 2021 and yelled at the landlord on September 29, 2021. The landlord's testimony about the tenant threatening his ex-wife was vague. I find the tenant's actions on September 02, 14 and 29 are not serious and urgent enough to end the tenancy pursuant to section 56 of the Act.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, the tenant, or someone the tenant had permitted on the property, has engaged in any of the actions of section 56(2)(a) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

As the landlord is not successful in this application, the landlord must bear the cost of his filing fee.

The landlord is at liberty to submit an application for an order of possession based on the Notice.

### Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues in accordance with the Act.

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: November 09, 2021

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Residential Tenancy Branch