



# 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 end to a tenancy pursuant to s. 56 of the *Residential Tenancy Act* (the “*Act*”) and for return of their filing fee pursuant to s. 72.

F.S. appeared as agent for the Landlord. The Tenant did not appear, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled at 11:00 AM on October 25, 2021. As the Tenant failed to appear, the hearing was conducted in their absence in accordance with Rule 7.3.

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 advises having served the Notice of Dispute Resolution and evidence by way of posting it to the Tenant’s door on October 8, 2021. I find that the Notice of Dispute Resolution and evidence was submitted in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant to have been served with the Landlord’s application materials on October 11, 2021.

### Issue(s) to be Decided

- 1) Should the tenancy end early without notice pursuant to s. 56 of the *Act*?
- 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 advises that the tenancy began on September 1, 2021. Rent is \$600.00 payable on the first day of each month. The Landlord advises that, as per the tenancy agreement, the Tenant was to have paid \$300.00 as a security deposit. The Landlord indicates that the Tenant has not paid rent nor paid the security deposit.

On September 8, 2021, the Landlord indicates having been advised that the Tenant left a mess in the yard of the residential property. The residential property is a multi-unit rental property. F.S. indicated that he attended the residential property on September 8, 2021 where he describes having a confrontation with the Tenant respecting the unpaid rent. It is not clear on the Landlord's submissions the nature of the confrontation. However, I note that the Landlord issued a 10-Day Notice to End Tenancy on September 9, 2021. I advised that the issue of unpaid rent is not the subject matter of the Landlord's application.

The Landlord advises that the police attended the residential property on September 11, 2021. As described by the Landlord, the Tenant appeared to be under the influence of drugs and was having issues with accessing her rental unit. The Tenant called the police on the basis that, as she alleged, the Landlord had changed the locks for the rental unit. The Landlord says that the Tenant later found her keys that day.

In the Landlord's submissions, F.S. indicates having been asked by the police on September 11, 2021 whether he would give more keys to the Tenant. F.S. indicated that he refused to do so on the basis that the Tenant had not paid rent.

The Landlord denies changing the locks. F.S. says that the Tenant said she misplaced her keys and when she could not find them, she accused F.S. of stealing her keys. The Landlord says that the Tenant broke the back window into the rental unit, though it is not clear to me based on the Landlord's evidence when this occurred.

The Landlord made submissions with respect to attempts the Tenant made to pay rent, none of which are relevant to their application. The Landlord further indicates having attempted to get a bailiff to remove the Tenant after the 10-day period in the notice of

September 9 elapsed. No bailiff attended as no order for possession appears to have been obtained by the Landlord.

The Landlord further submits there were instances when the other occupants of the residential property made noise complaints regarding the Tenant. In the Landlord's written submissions, text messages are referenced from September 17, 18, and 19 from other occupants. None of these were submitted into evidence.

F.S. indicated having spoken to a care worker tied to an organization that assists the Tenant on September 21, 2021 asking when the Tenant could move her furniture into the rental unit. The Landlord indicated that that could not occur as the Tenant was being evicted.

On September 24, 2021, the Landlord indicates having received complaint from the tenant who occupies the rental unit below the Tenant. The other tenant advised that there was water dripping through the ceiling into one of the rental unit's bedrooms. Video evidence was provided by the Landlord showing the water damage to the roof. At the hearing, the Landlord indicated that the water damage occurred because the Tenant had taken a shower without a shower curtain. The Landlord assured that the water leak was not due to an issue with the plumbing. The Landlord did indicate that the Tenant was doing her laundry in the bathtub and that, when she did, the water would leak.

In the Landlord's written submissions, there is a note that the Landlord had attended the residential property with the RCMP on September 27, 2021. The RCMP would not assist in removing the Tenant. The Landlord made the present application on September 27, 2021. There is a further note that on September 29, 2021, the Landlord removed the shower head from the rental unit's bathroom after attending the property when the Tenant was not present.

The Landlord further indicated that the police attended the rental unit on two other occasions. The first was when the Tenant called the police to say that she believed there was an incident of family violence in the adjacent rental unit. When the police attended, the occupant of the rental unit was found watching TV. The other occasion was on October 23, 2021, where the Landlord was informed that the police attended on the basis that the Tenant claimed she had been locked out of her rental unit.

On October 5, 2021, the Landlord indicates having attended the rental unit and when unlocking the door he heard the Tenant yell from inside the rental unit that she would stab whoever entered.

At the conclusion of the hearing, F.S. implored that I grant an order for possession and intimated that if one were not granted there would be the risk of violence between he and the Tenant.

### 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.

I view the following timeline to be particularly relevant:

- September 1, 2021 – The Tenant begins to occupy the rental unit.
- September 8, 2021 – The Landlord confronts the Tenant about the non-payment of rent.

- September 9, 2021 – The Landlord issues a 10-Day Notice to End Tenancy.
- September 11, 2021 – The RCMP attend the rental unit on the basis that the Tenant cannot gain access to her rental unit. The Landlord advises the RCMP that he would not give a copy of the key to the Tenant on the basis that she had not paid rent.
- On or after September 19, 2021 – The Landlord attempts to secure a bailiff without obtaining an order for possession.
- September 27, 2021 – The Landlord attends the residential property with RCMP to remove the Tenant.
- September 27, 2021 – The Landlord applies to end the tenancy pursuant to s. 56.

The present circumstances may give rise to ending the tenancy pursuant to a s. 46 (unpaid rent) or s. 47 (cause). However, the Landlord has failed to demonstrate that it would be unreasonable or unfair to wait for a notice granted under s. 47 to take effect. There appear to be disturbances to the quiet enjoyment of the property by the Tenant, however, these disturbances are not of the nature contemplated by Policy Guideline 51.

The most significant aspects of the Landlord's claim are related to damage to the property namely the broken window and the leaking water. By the Landlord's own admission, they refused to provide an additional key to the rental unit on the basis that she had not paid rent. This is not permissible under the *Act*.

Finally, it is not clear based on the Landlord's evidence that the Tenant was, in fact, responsible for the water damage. The Landlord says that the damage occurred due to the Tenant showering without a shower curtain. Video of the bathroom shows a shower curtain was present. The Landlord further indicates that the water leaks whenever the shower is in use, such as when the Tenant washes her clothes in the bathtub, which would, presumably, not require a shower curtain in any event. Put simply, it is not clear to me that the water damage was caused by the tenant and may very well be caused by another plumbing issue.

I am not satisfied that the Landlord has made out their cause under s. 56 and find that the present application, filed on the same day the RCMP refused to assist the Landlord in removing the Tenant, is an attempt to obtain an order for possession through the expedited process rather than following the process and timelines set out under the Rules of Procedure and ss. 46 and 47 of the *Act*.

Conclusion

I dismiss the Landlord's application for an early termination of the tenancy. As the Landlord was unsuccessful in their application, they are not entitled to return of their filing fee under s. 72. Accordingly, the Landlord's application under ss. 56 and 72 are 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: November 1, 2021

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Residential Tenancy Branch