



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act [landlord's notice for cause]; and
- to recover the cost of the filing fee.

The landlord and the landlord's assistant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

As the tenants did not attend, the matter of service of the landlord's application on the tenants was considered.

The landlord stated he served each tenant with his Application for Dispute Resolution, evidence, and Notice of Hearing (application package), by attaching it to the tenants' door on November 10, 2021.

I find the landlord submitted sufficient evidence that the tenants were served the landlord's application as required under section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord and assistant provided affirmed testimony that they were not recording the hearing.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the landlord's submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Has the landlord provided sufficient evidence to end the tenancy early and obtain an order of possession pursuant to section 56 of the Act?

#### Background and Evidence

The landlord provided a written tenancy agreement showing the tenancy began on June 30, 2020. The rental unit is a unit in a condominium building.

To support his application, the landlord said that the emergency response team has swarmed the residential property twice, with at least 20 armed officers, and that the tenant MC has been taken away both times. Between the two times, MC returned to kick the door in and caused other considerable damage. The two incidents occurred on August 4, 2021, and September 2, 2021.

The landlord submitted that the tenants are hoarders, and that the rental unit is trashed. Additionally, according to the landlord, the tenants are causing fines to be issued by the strata against the rental unit.

The landlord submitted that there are many occupants of the building who are afraid of MC and would be willing to sign a document to that effect.

The landlord said that he emailed the tenants a 60 day notice to vacate by the end of October, 2021, and because they did not vacate as they promised, he initiated this application for an order ending the tenancy on an expedited basis. Filed in evidence was a copy of the emailed notice.

The landlord said that the tenants did not pay the monthly rent in November 2021, and he issued them a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. To date, they still have not paid the monthly rent. Filed in evidence was a copy of the Notice.

Also included in filed evidence was a copy of the newspaper article about the last swat team incident and email communication between the landlord and the tenant.

### Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act states:

56 (1) A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(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.**

[emphasis added]

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).*

The onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

In this case, the landlord specifically stated in his evidence the following:

*At the end of October, I was informed that I had not used the right eviction protocol and would have to start the 60 days over. When they did not pay their*

*back rent, fines and Novembers rent we then began trying to get them out sooner.*

The latest incident involving the emergency response team regarding the alleged criminal activities of the tenant MC was September 2, 2021. Rather than file an urgent application for dispute resolution for an immediate end to the tenancy at that time, the landlord waited until November 5, 2021 to file such an application.

Additionally, the landlord submitted that the tenants failed to move out by the emailed notice from the landlord, so he chose to file this urgent application.

The landlord testified directly that this application was in response to the tenant's alleged threats to the other tenant. The landlord, however, cited a text message sent February 2, 2021, as the most recent occurrence.

For these reasons, I find the landlord provided insufficient evidence of imminent danger to the health, safety, or security of a landlord or another tenant or occupant. As a result, I find the landlord has provided insufficient evidence of proving the second part of the test, that 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.

Additionally, I find the primary evidence of the landlord dealt with issues such as hoarding, of which there was no proof, unpaid monthly rent, complaints from neighbours in the strata complex, and strata fines, which I find are more appropriately addressed in a One Month Notice, which has not been served on the tenants, or a 10 Day Notice, which has been served on the tenants.

Overall, I find the purpose of this application was to circumvent the process regarding the enforcement of a One Month Notice or a 10 Day Notice for Unpaid Rent or Utilities.

Therefore, **I dismiss** the landlord's application due to insufficient evidence, without leave to reapply.

The tenancy shall continue until otherwise ended in accordance with the Act.

Conclusion

The landlord's application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 23, 2021

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Residential Tenancy Branch