



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

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

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The two landlords, landlord KM ("landlord") and "landlord SM" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing began at 9:30 a.m. with only me present. The two landlords called in late at 9:33 a.m. The hearing ended at 9:47 a.m.

I monitored the teleconference line throughout this hearing. 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 two landlords and I were the only people who called into this teleconference.

The landlord confirmed the rental unit address. The landlord confirmed her email address for me to send a copy of my decision to the landlords after this hearing.

At the outset of this hearing, I informed both landlords that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). Both landlords affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlords. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The landlords filed this application on October 30, 2021 and a notice of hearing was issued by the RTB on November 1, 2021. The landlords were required to serve that notice, the application, and all other required evidence in one package to the tenant, within one day of receiving the documents from the RTB, as per RTB *Rules* 10.2 and 10.3.

The landlord stated that the tenant was served with the landlords' application for dispute resolution hearing package on November 2, 2021, by way of posting to the tenant's rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on November 5, 2021, three days after its posting.

#### Issues to be Decided

Are the landlords entitled to end this tenancy early and to obtain an Order of Possession?

Are the landlords entitled to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both landlords, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on September 23, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,650.00 is payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$400.00 were paid by the tenant and the landlords continue to retain both deposits. The tenant continues to reside in the rental unit. The rental unit is the basement level of a house, where the landlords occupy the upper floors.

The landlord stated the following facts. The tenant smokes “weed,” which “seeps” to the main and third levels of the house. The smoke gets into the landlord’s bedroom. The landlord’s daughter sleeps with her and she wakes up in the night because of the smoke. Even the landlord’s son does not like the smoke. The landlord has tried to talk to the tenant one time but cannot tell her everything because the tenant will not listen. The landlord wants possession of her property back from the tenant.

Landlord SM testified regarding the following facts. The tenant uses abusive language. The tenant’s daughter can be heard telling her mom to “stop.” There are two seniors and four kids in the house. The tenant causes damage to the landlords’ property, as she bangs the door hard in the basement. Landlord SM’s father-in-law had a stroke a couple of weeks ago and he and the landlords’ daughter complain about the “weed.” The “weed” bothers landlord SM, who comes home at 1:00 a.m. from work. The landlords’ family does not smoke or drink. The tenant pushed the laundry machine to the door, so the landlords were unable to exit to the water area. When the landlords asked the tenant to remove it, the tenant called the police. The tenant lied and said that she did not smoke, but she still smokes “weed,” which is against the landlords’ tenancy agreement. The tenant is living for free at the rental unit. The tenant did not pay rent last month or this month. The tenant took back \$1,000.00 from her rent last month but did not move out of the rental unit.

### Analysis

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party’s agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlords did not properly present their claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 17 minutes and only the landlords attended the hearing, as the tenant was not present. The landlords had ample opportunity to present their application. However, the landlords did not go through any of their documentary evidence submitted for this hearing. I repeatedly questioned the landlords if they had any other information to present for this hearing and gave them multiple opportunities for same.

Section 56 of the *Act* requires the landlords to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a One Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlords or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlords must show, on a balance of probabilities, that:

- (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...*

The landlords did not testify about which one of the above parts of section 56(a) of the *Act*, that they were applying under.

On a balance of probabilities and for the reasons stated below, I find that the landlords' application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlords did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlords failed to show the urgency of this situation to demonstrate that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined. The landlords did not indicate whether they issued a 1 Month Notice to the tenant.

The landlords repeatedly referred to the tenant's non-payment of rent. This is not a relevant issue, as it is not contained in section 56 of the *Act* above. The landlords did not indicate when any of the above events occurred or for how long they have been occurring.

Accordingly, I dismiss the landlords' application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlords' entire 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: November 15, 2021

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Residential Tenancy Branch