



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARKSVILLE LIONS HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

On November 19, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for an early end of tenancy and an order of possession for the rental unit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The Tenant confirmed that she received the Landlord's documentary evidence that is before me. The parties were informed that recoding the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Background

The Landlord and Tenant testified that the tenancy began in May 2004 and is on a month-to-month basis. The parties testified that subsidized rent in the amount of \$472.00 is due to be paid by the first day of each month. The parties testified that the Tenant paid the Landlord a security deposit of \$350.00.

The Landlord testified that there was a serious incident involving the Tenant's son that occurred on September 15, 2021. The Landlord testified that the RCMP were called because the Tenant's son had a gun and was pointing it at young girls on the property.

The Landlord stated that the police attended the property and arrested the Tenant's son. The Landlord stated that she has provided a video recording of the incident.

The Landlord stated that she issued a One Month Notice to End Tenancy for Cause ("the One Month Notice") to the Tenant on September 16, 2021. The Landlord stated that the reason for ending the tenancy within the One Month Notice is

*Tenant has engaged in illegal activity that has, or is likely to:*

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.*

The Landlord provided a copy of the One Month Notice.

The One Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that she received the One Month Notice and disputed it. The RTB case management system indicates that on September 27, 2021, the Tenant disputed the One Month Notice. A conference call hearing is scheduled for February 7, 2022 at 11:00 am, to determine whether or not the Landlord has sufficient cause to end the tenancy.

The Landlord testified that she was not aware that the Tenant had disputed the One Month Notice when she applied for an early end of tenancy on November 19, 2021. When the Landlord was asked why she did not apply to enforce the One Month Notice she replied that it would take longer to get a hearing if she applied for that, and stated she has safety concerns for the other occupants of the property. When the Landlord was asked why she waited until November 19, 2021 to apply for an early end of tenancy, rather than applying 11 days after the One Month Notice was served, she replied that she was waiting to get a copy of the video recording back from police.

The Landlord's testimony regarding ending the tenancy was entirely focused on the incident that occurred on September 15, 2021. There was no other testimony from the Landlord that there was a new intervening act, or further dangerous or poor behavior involving the Tenant's son since the incident of September 15, 2021.

The Tenant testified that she spoke to her son who informed her that he had a pellet type gun in his bag. The Tenant refutes the Landlord's testimony that her son pointed the gun at anyone. She stated that the video does not show him pointing a gun. The Tenant stated that the police did arrest her son and that he is attending court on the matter.

The parties were given an opportunity to settle the matter in accordance with section 63 of the Act; however, a settlement agreement could not be reached.

### Analysis

Section 56 of the *Act* provides that a Landlord may make an application for dispute resolution to request an order to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 and granting the Landlord an order of possession in respect of the rental unit. If an order is made under this section, it is unnecessary for the Landlord to give the Tenant a notice to end the tenancy.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, in the case of a Landlord's application, the Tenant or a person permitted on the residential property by 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 interest 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,
- 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;
- caused extraordinary damage to the residential property, **and,**
- **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 to take effect.** [my emphasis]

Based on the testimony of the parties and the documentary evidence before me I make the following findings:

The day after the incident involving the Tenant's son, the Landlord issued the One Month Notice rather than applying for an early end of tenancy. The One Month Notice gave the Tenant the right to dispute the Notice. The Tenant paid the fee and disputed the One Month Notice, and a hearing is scheduled for February 7, 2022.

52 days after the Tenant disputed the One Month Notice, the Landlord applied for and was granted an emergency hearing which has bypassed the due process of the Tenant's dispute of the One Month Notice.

I have considered whether or not it would be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for the dispute of the One Month Notice to take place.

I find that there has not been a new intervening act or new allegation of wrongdoing in the three months since the alleged incident on September 15, 2021. The Landlord applied for the emergency hearing stating she has safety concerns. I find that there is insufficient evidence from the Landlord to establish that the Tenant's son presents an ongoing risk to the Landlord or other occupants of the rental property, where it would be unreasonable to wait for the dispute hearing for the One Month Notice that is scheduled for February 7, 2021.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

### Conclusion

The Landlord issued a One Month Notice to End Tenancy for Cause to the Tenant and the Tenant disputed the Notice and a hearing is scheduled. The Landlord then applied for an early end of tenancy and got an emergency hearing on the basis of the same alleged behavior.

I find that there is insufficient evidence before me to establish that the Tenant's son presents an ongoing risk to the Landlord or other occupants of the property where it would be unreasonable to wait for the dispute hearing of the One Month Notice that is scheduled for February 7, 2021.

The Landlord's application for an early end of tenancy and an order of possession for the rental unit is dismissed.

The tenancy continues until ended 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: December 16, 2021

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Residential Tenancy Branch