



# 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 landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the Application and evidence.

### **Preliminary Issue: Adjournment of Hearing**

Although the tenant testified to having submitted evidence for this hearing, nothing was received by the RTB. The tenant requested an adjournment of the hearing in order to submit their evidence.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

While I am sympathetic to the tenant's situation, I am not satisfied that the tenant had established that the evidence was submitted within the required time limits, and that the adjournment request was not due to the intentional actions or neglect of the tenant. I also took in consideration that this matter was set as an expedited hearing, and that the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing. The request for an adjournment was not granted. The hearing proceeded. As no evidence was received by the tenant for this hearing, the tenant's evidentiary materials were not considered. The tenant was allowed to submit oral testimony.

### **Issues(s) to be Decided**

Is the landlord entitled to an early end of tenancy and an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 1, 2020, and continued on a month-to-month basis after January 31, 2021. Monthly rent is set at \$1,200.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$600.00, which the landlord still holds.

The landlord is seeking an early termination of this tenancy. The landlord listed their main concerns in their written submissions which includes allowing friends or occupants to occupy the property and stay in RVs and campers without the landlord's permission. The landlord testified that these parties would use the electricity outlets on the property, and use the property to work on their vehicles.

The landlord testified that they would attempt to address the issues with the tenants, but were met with verbal abuse and threats. The landlord is concerned that the house is not being taken care of, and the tenant has allowed the property to be cluttered with car parts, tires, and garbage.

The landlord is also concerned about the tenant using the garage, which the landlord submits was not included in the tenancy agreement. The landlord also believes that the tenant has a dog, which is not allowed. The landlord expressed concern that the tenant has been smoking or doing drugs on the property. In addition to these issues, the landlord testified that tenant has failed to pay rent when due. The landlord has served the tenant with Notices to End Tenancy in August, September, and October 2021. The landlord expressed concern in the hearing that the situation has not improved, but has worsened.

The tenant testified that there is active dispute between the parties which involves the use of the garage. The tenant disputes the other allegations made by the landlord.

### **Analysis**

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that 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 interests 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;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that 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, the tenant 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.*

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 55 of the *Act*. Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 56 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered.

The landlord has served the tenant with several Notices to End Tenancy, but has not applied for an Order of Possession pursuant to those Notices. The landlord is requesting an Order of Possession pursuant to section 56 as they feel that the situation has worsened, and they feel threatened when they have attempted to deal with the growing issues between the parties.

I have considered the submissions and evidence of both parties. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair. As stated in Residential Policy Guideline 51, applications to end a tenancy early for very serious breaches only.

I acknowledge the fact that the landlord has been dealing with a multitude of outstanding issues in this tenancy, but I am not satisfied that the landlord has demonstrated that there is an immediate danger or threat to the property or the landlord. Although the landlord has referenced verbal abuse and threats from the tenant or occupants, I do not find that threat to be serious enough to support why the standard process of obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause to be unreasonable or unfair. As indicated by the landlord, the landlord has been dealing with these issues since the issuance of the first Notice to End Tenancy in August. Despite the numerous Notices to End tenancy served on the tenant, the landlord has not applied for an Order of Possession pursuant to these notices. For these reasons, I dismiss the landlord's application for an early end to this tenancy.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in their application, the landlord must bear the cost of this filing fee.

**Conclusion**

I dismiss the landlord's application in its entirety. This 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 21, 2021

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Residential Tenancy Branch