



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened in response to an application made December 22, 2021, by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An early end to the tenancy and an order of possession - Section 56; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. One Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by posting the Hearing Package on the door on January 12, 2022. The other Tenant was served with the Hearing Package on the same date by registered mail. I accept that the Hearing Packages were served in accordance with Section 89 of the Act.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an early end of tenancy and an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on April 1, 2021. Rent of \$1,990.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$995.00 as a security

deposit. On December 7, 2021, the Landlord served the Tenant with a one-month notice to end tenancy for cause dated December 7, 2021 (the "Notice"). The Notice sets out an effective date of January 31, 2022 and details the entries into another unit and the removal of the dog from that unit without the owner's consent. The Tenant did not dispute the Notice and on January 26, 2022, the Tenant informed the Landlord that they would be moved out of the unit by January 29, 2022. On December 18, 2021, the Landlord received an email from the lower tenant stating that the Tenant had thrown two planters off the balcony. This email sets out that the police were not called although the lower tenants were tempted to call because of the noise and smoking in the Tenant's unit. The Landlord did not seek an order of possession based on the undisputed Notice because they believed that they needed proof that the Tenant was not going to move out. The Landlord argues that they could not wait for the Notice to take effect as the lower tenant was calling about the Tenant and that the lower tenant feared harm from the plants being thrown. The Landlord does not have evidence of the dates of those calls. The Landlord does not know if they have evidence of anything else that occurred between the date of the Notice and the date of the Landlord's application. The Landlord states that it made this extraordinary application as their employer directed the Landlord to expedite the matter.

### Analysis

Section 56(2) of the Act provides that 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.

There is no evidence of illegal activity. While there is evidence of damage to the planters there is no evidence that the area under the fallen planter was damaged and there is no evidence that the planter that was damaged belonged to the Landlord. Even if the planter belonged to the Landlord, I do not consider this evidence of extraordinary damage. There is only evidence of one incident that occurred after the Notice was served and before this application was made. This incident was the throwing of a planter or planters off the deck. However, the lower tenant who made the complaint about the planter did not call the police and only indicates a disturbance from the noise and smoke. This evidence does not meet the high standard required for this extraordinary application and is not evidence of an immediate and severe risk such that the Landlord could not wait for the Notice to take effect. For these reasons I find that the Landlord has not substantiated an early end to the tenancy, and I dismiss this claim along with the claim for an order of possession. As the Landlord has not been successful with their claim, I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 27, 2022

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Residential Tenancy Branch