



# Dispute Resolution Services

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 the tenancy and an order of possession pursuant to section 56; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:48 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord and the landlord's son ("**JJ**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord, JJ, and I were the only ones who had called into the hearing.

JJ testified he served that the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on January 21, 2021, one day after the notice of dispute resolution proceeding form was issued. I find that the tenant has been served with the required documents in accordance with the Act and the RTB Rules of Procedure.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2018. Monthly rent is \$1,800. The tenant paid the landlord a security deposit of \$900, which the landlord continues to hold in trust for the tenant. The rental unit is located in a two-story single-detached house. JJ referred to the rental unit as the "basement" unit but testified that it is on the same level as the "main" unit. The main unit is occupied by the landlord and her family, including JJ.

JJ testified that on January 13, 2021 his family was home in the main unit. He and his sister were in family room together, the landlord was cooking in the kitchen. He testified that he heard a loud pop or bang, and thought that it was a pot or pad dropped by his mother. Roughly 30 minutes later, the landlord went to clean the bathroom in the main unit and noticed there was a hole in the drywall. Upon closer inspection, JJ discovered four holes including one in the garage door.

JJ identified these holes as bullet holes caused by a single shot fired from the rental unit. He testified that he went out to speak with the tenant, and the tenant reacted shocked. The tenant invited him into the rental unit to inspect it, but when they got to the front door of the rental unit, the tenant said that landlord and JJ had to wait outside until he "cleaned up". At this point, JJ felt unsafe and called the police.

The police attended the rental unit within two minutes of his call and went into both the main unit and the rental unit. JJ, the landlord, and her family, or ask to leave the main unit during this time. They were outside for about 2 hours while the police investigated. Between 15 to 20 police officers attended the house.

JJ testified that a police officer told him that the tenant was known to the police. He testified that police officer told him that the tenant had a friend over and a friend had shot a bullet into the wall. He was unsure if it was intentional or an accident.

The landlord submitted photographs of the bullet holes into evidence. The holes appear to be marked with police evidence stickers.

The landlord installed the security camera which had a view of the entry to the rental unit. JJ and the police officer reviewed the footage and saw the tenant's friend exit the rental unit shortly after the shot was fired. A small pistol could be seen in his hand.

JJ testified that after this incident, the tenant indicated to him that he would vacate the rental unit, but that the tenant had not yet done so. He testified that the tenant attends the rental unit every couple of days to retrieve his belongings. However, two of the tenant's friends (different from the one who fired the gun) stay in the rental unit full time to, as the tenant told him, "take care of it".

JJ testified that the landlord is very anxious following this incident and has trouble sleeping at night. She's afraid as being in the house with the tenant and his friends next door.

The landlord seeks an order of possession effective immediately.

### **Analysis**

Section 56 of the Act sets out the criteria that must be met for a landlord's early end to tenancy application:

#### **Application for order ending tenancy early**

**56(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.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord must prove it is more likely than not that the tenant's conduct meets the criteria set out at section 56(2) of the Act.

Policy Guideline 51 considers application for early ends to tenancy. It states:

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). Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications

Based on the testimony of JJ and the photographs of the bullet holes, I am satisfied that the actions of the tenant's guest on January 13, 2021 meet the standard set out at section 56(2)(a) of the Act.

I am satisfied that the individual who fired the gun was permitted on the property by the tenant. If he was not, I do not think the tenant would have acted surprised when JJ confronted him about the gunshot. Instead, I would have expected the tenant to explain how someone came into the rental unit against his will and shot a gun. This did not happen. From this I surmise that the tenant permitted the guest into the rental unit.

The firing of a gun inside the rental unit, into the main unit is an unreasonably disturbed of the landlord of the residential property. It seriously jeopardized the health or safety or a lawful right or interest of the landlord. It is also likely an illegal act caused damage to the landlord's property and adversely affected the quiet enjoyment, security, and safety of the landlord and her family.

Additionally, due to the potentially deadly nature of the incident, and the understandable anxiety the landlord is suffering, I find it would be both unreasonable and unfair to the landlord and her family to wait for a notice to end the tenancy under section 47 to take effect.

As such, I grant the landlord's application, and issue an order of possession effective one day after the landlord serves it on the tenant. This order is effective against the tenant and any other occupants of the rental unit.

Pursuant to sections 72(1) and (2) of the Act, as the landlord has been successful in the application, she may recover the filing fee from the tenant. The landlord may retain \$100 of the security deposit in satisfaction of this amount.

The landlord must deal with the balance of the security deposit (\$800) in accordance with section 38 of the Act.

**Conclusion**

Pursuant to section 56 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within one day of being served with a copy of this decision and attached order(s) by the landlord.

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: February 3, 2022

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Residential Tenancy Branch