



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on January 28, 2022 (the “Application”). The Landlords applied for an order ending the tenancy early pursuant to section 56 of the *Residential Tenancy Act* (the “Act”). The Landlords also sought reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant did not appear at the hearing. I explained the hearing process to the Landlords. I told the Landlords they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlords provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlords’ evidence.

The Landlords testified that the hearing package and evidence were posted to the door of the rental unit February 02, 2022. The Landlords submitted a Proof of Service signed by a witness confirming service.

Based on the undisputed testimony of the Landlords and Proof of Service, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the package February 05, 2022. I also find the Landlords complied with rule 10.3 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make

relevant submissions. I have considered the documentary evidence and all oral testimony of the Landlords. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Landlords entitled to an order ending the tenancy early pursuant to section 56 of the *Act*?
2. Are the Landlords entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted. The tenancy started April 15, 2021 and was for a fixed term ending October 31, 2021. Rent is \$1,100.00 per month. The Tenant paid a \$550.00 security deposit. The agreement is signed by the Landlords and Tenant.

The Landlords confirmed the basis for the Application as set out in the Application which outlines the following issues:

- Tenant is harassing the Landlords' family
- Tenant is making loud noise, screaming, banging on the wall, swearing
- Tenant is threatening the Landlords by posting false accusations on social media and calling the Landlords thieves, liars and criminals
- The Landlords have reported the Tenant to the RCMP five times
- The Tenant has caused extensive damage to the rental unit

I asked the Landlords to provide further details about the Tenant harassing the Landlords' family, RCMP involvement and the Tenant causing extraordinary damage to the rental unit.

The Landlords testified that the Tenant started harassing their family October 31, 2021 by banging on the wall and using profanity towards the Landlords. The Landlords testified that the Tenant is banging on the wall and screaming in the middle of the night. The Landlords testified that the Tenant is being disrespectful to the Landlords. The Landlords testified that these are the reasons they have called the RCMP in relation to the Tenant.

In relation to extensive damage, the Landlords testified that an inspection of the rental unit was done in December and there was a water leak from the shower that the Tenant failed to tell them about. The Landlords testified that the leak has caused extensive damage to the floor and mold. The Landlords testified that the carpet in the rental unit is dirty. The Landlords testified that the Tenant is smoking and throwing cigarette butts on the property.

The Landlords submitted evidence of the following issues:

- The Tenant causing damage to the rental unit
- Empty alcohol bottles
- Garbage and clogged drain in front of rental unit
- Loud banging from the Tenant
- The Tenant smoking and dropping cigarette butts on the property
- The Tenant stating “liar” repeatedly while walking to and from the Landlords’ deck
- The Tenant preventing access to the rental unit
- Dirty carpet
- The Tenant sending a disrespectful text message to the Landlords
- The Tenant threatening to post about the Landlords on social media
- Doctor’s notes
- Mold due to the water leak

### Analysis

Section 56 of the *Act* allows an arbitrator to end a tenancy early when two conditions are met. First, the tenant, or a person allowed on the property by the tenant, must have done one of the following:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
2. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
3. Put the landlord's property at significant risk;

4. Engaged in illegal activity that has (a) caused or is likely to cause damage to the landlord's property (b) 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) jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
5. Caused extraordinary damage to the residential property.

Second, it must be unreasonable or unfair to require the landlord to wait for a One Month Notice to End Tenancy for Cause under section 47 of the *Act* to take effect.

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the circumstances meet this two-part test.

I am not satisfied the evidence provided proves that the two-part test has been met. Section 56 of the *Act* is reserved for the most serious of circumstances. The issues outlined in the Application and Landlords' evidence are not sufficiently serious to warrant ending this tenancy without notice to the Tenant.

I acknowledge that there is medical evidence before me about the affects of the Tenant's actions or behaviour on the Landlords and their family. However, in my view, the focus of section 56 of the *Act* is on the actions or behaviour of the Tenant. The only issue raised that may meet section 56 of the *Act* is the Tenant harassing the Landlords' family by banging on the wall and screaming. However, the evidence of the Tenant banging on the wall and screaming consists of four videos, two of which have no sound and one of which I cannot tell from the video which noises are being made by the Tenant. Further, it is difficult to tell from the fourth video the extent of the disruption by the Tenant because the noise is quiet in the video. In the circumstances, I am not satisfied the Landlords have proven that the Tenant's actions or behaviour meet the two-part test in section 56 of the *Act*. It may be that the Tenant's actions and behaviour are grounds to end the tenancy pursuant to section 47 of the *Act* and a One Month Notice for Cause; however, this is not the issue before me.

Given the above, I dismiss the request for an Order of Possession without leave to re-apply. Given the Landlords were not successful in the Application, the Landlords are not entitled to reimbursement for the \$100.00 filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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: February 15, 2022

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Residential Tenancy Branch