



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application pursuant to section 72.

The Landlord, the Landlord's agent ("KM"), the Tenant and the Tenant's advocate ("HB") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

KM testified the Notice of Dispute Resolution Hearing and Landlord's evidence ("NDRP Package") was served on the Tenant in-person on March 2, 2022. KM submitted a signed Proof of Service on Form RTB-9 certifying the NDRP Package was served on the Tenant on March 2, 2022. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

### Preliminary Matter – Failure of Tenant to Serve Evidence on Landlord

The Tenant stated she filed her evidence with the Residential Tenancy Branch on March 8, 2022, but acknowledged she did not serve that evidence on the Landlord. For expedited hearings, Rule 10.5 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

### **10.5 Time Limit for respondent's evidence**

The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

I find the Tenant's evidence was not served on the Landlord in accordance with Rule 10.5. Based on the above, I decline to admit any of the Tenant's evidence for this hearing.

#### **Issues to be Decided**

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- entitled to recover the filing fee for this application from the Tenant?

#### **Background and Evidence**

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

KM stated the Tenant was renting a single-family house ("House") pursuant to a tenancy that commenced on July 1, 2021, for a fixed term ending July 1, 2022, with rent of \$2,300.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$1,150.00 on or before July 1, 2021. KM acknowledged the Landlord received the security deposit and that the Landlord was holding it in trust for the Tenant.

KM testified the House was furnished when it was rented to the Tenant. KM stated the Tenant brought a trailer ("Trailer") onto the residential property and plugged it into the electrical service for the House. KM stated the Landlord requested the Tenant remove the trailer from the residential property sometime in December 2021 but the Tenant refused to remove it. KM stated the trailer caught fire around midnight on February 1, 2022, and that it was destroyed. KM stated the fire caused damage to the front of the House.

KM stated that at no time, during or after the fire had been extinguished by the fire department, did the Tenant call the Landlord to advise him of the damage to the House.

KM stated the Landlord was alerted to the fire and resulting damage to the Trailer and House the next morning when the Fire Marshall called the Landlord to discuss access to the rental unit. KM stated that, when the Landlord went to the residential property to view the damage, he discovered the Tenant had removed furniture that belonged to him from the rental unit and placed it in the Tenant's trailer. As a result, the Landlord's possessions that were placed in the Trailer were destroyed. KM submitted photographs of the burned-out trailer and the front of the house which showed a large portion of the siding and underlying tar paper burned and torn away from the house. The Landlord testified he was informed verbally by the insurance adjuster that it would cost \$29,000.00 to \$30,000.00 to repair the House. The Landlord testified the fire also caused damages to the house next door to the rental property.

KM stated the Tenant refused to give the Landlord, Fire Marshall and insurance adjuster access to the rental unit when required. KM stated the Tenant intimated that, if her boyfriend had been present, there would have been physical violence. When I asked when and how the Tenant was served with written notice for access to the rental unit, KM stated it was by verbally and by text. KM stated the Landlord suspected that someone was living in the garage to the house and in the Trailer. When I asked, KM conceded there were no provision in the tenancy agreement that restricted the Tenant from having additional occupants in the rental unit.

The Tenant testified the Landlord did not request she remove the trailer from the rental property. However, the Tenant admitted the Landlord did request that she unplug the Trailer from the electrical service because of the high electrical consumption of the rental unit. The Tenant stated she complied with the Landlord's request to unplug the Trailer from the electrical supply. The Tenant stated the fire was not caused by her or any of the other occupants living in the residential unit or by anyone she permitted on the residential property. The Tenant admitted she did not have Tenant's insurance to cover the damages to the House. The Tenant stated the Landlord has not given her written notices for access the rental unit and that she refused access on several occasions because it was not convenient at the time. The Tenant stated that the House was not rented to her on a furnished basis and that the Landlord had failed to remove some of his personal possessions before she move into the rental unit.

## Analysis

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 this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

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

- (2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that
  - (a) the tenant or a person permitted in the manufactured home park 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.
- (3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

*Residential Tenancy Branch Policy Guideline (“RTBPG”) Number 51* [Expedited Hearings] provides guidance on a landlord’s application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord’s application:

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

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).

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).

The Tenant admitted she permitted the Trailer to be brought onto the residential property. The Tenant admitted the Trailer caught fire on or about February 1, 2022, but denied the fire was caused by her or any of the occupants of, or anyone she had allowed on to the residential property. I find that, by permitting the Trailer to be brought onto the residential property, she implicitly assumed liability for any damages that might arise from the Trailer being stored on the residential property.

I find the expression “extraordinary damage” as used in section 56(2)(a)(v) of the Act, is intended to distinguish those damages from ordinary damages that may arise from use and occupation of a rental unit by a tenant, their guest and/or pets. The damages caused to the front exterior of the House are extensive. The Landlord stated that, according to his insurance adjuster, the costs of repairs to the House

are estimated to be in the range of \$29,000.00 to \$30,000.00. I consider the nature and extent of the physical damage to the House to constitute extraordinary damage within the meaning of section 56(2)(a)(v) of the Act. I make this finding having regard to the damage described in testimony of the Landlord and KM, the damage evidenced in the photographs submitted by KM, and the estimated cost of repair. I am also satisfied that, in the absence of having her own tenant's insurance policy, it is unlikely the Tenant will be able to reimburse the Landlord or his insurer for the costs of the repairs. Based on the evidence provided, I am satisfied that the Landlord has established the Tenant caused extraordinary damage to the rental unit as a result of the Tenant permitting the Trailer to be brought onto and stored on the residential property and that cause has been established under section 56(2)(a)(v) of the Act.

KM stated the Tenant had threatened the Landlord with violence when the Landlord attempted to obtain access to the rental unit. However, KM did not provide any testimony that an emergency continued after the firefighters had extinguished the fire in the Trailer and the front of the House. KM admitted the Landlord had not given the Tenant written notice to access the rental unit as required by section 29(1) of the Act and served in accordance with section 88 of the Act. The Tenant stated she did not give the Landlord and others access to the rental unit as it was not convenient at the time and that the Landlord had not given her written notice for such access. I find that, on a balance of probabilities, the Tenant was asserting her right to refuse access to the rental unit in the absence of service of written notice for access. I find the Tenant's purported threats to the Landlord were protestations to the Landlord's attempts to gain access to the rental unit that did not comply with the requirements of sections 29(1) and 88 of the Act. I find the Landlord has not demonstrated the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord under section 56(2)(a)(ii). The Landlord did not testify, or submit any evidence, the Tenant or another person permitted by the residential property engaged in any type of "illegal activity" in breach of section 56(2)(a)(iv) of the Act.

The Landlord did not testify, or submit any evidence, there is a risk the Tenant or other occupants of the rental unit would start another fire or that the Tenant or other occupants pose a continuing threat to the Landlord or other occupants of the residential property. Based on the above, although the Landlord has proven cause under section 52(2)(a)(v) of the Act, I am not satisfied that 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 56(2)(b) of the Act. As the Landlord has not satisfied the requirement set out in section 52(2)(b) of the

Act, I find the Landlord has not established he is entitled to an early end to the tenancy pursuant to section 56 of the Act. Accordingly, I dismiss the Landlord's application without leave to reapply.

As the Landlord has not been successful in his application, I dismiss, without leave to reapply, his claim for reimbursement of the filing fee of his application.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

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 Tenancy Act*.

Dated: March 16, 2022

---

Residential Tenancy Branch