



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      ET FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

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

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 10:05 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agents (the "landlord") attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on May 6, 2022, the tenant was served a copy of the Application for Dispute Resolution and Notice of Hearing by registered mail. The landlord provided a tracking number (RN 619389575CA) as proof of service in the hearing.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

### Issues

Is the landlord entitled to an order of possession for an early end to the tenancy?  
Is the landlord entitled to recover its filing fee?

### Background & Evidence

The tenancy began on January 1, 2021. The rental unit is an apartment in a multi-unit building.

The landlord filed this application on May 2, 2022, requesting an early end to the tenancy on the grounds that the tenant poses an immediate and severe risk to the rental property, other occupants, or the landlord.

In support of the application, the landlord submitted an incident report of a door being kicked in by a guest of the tenant which was from February 8, 2022. The landlord also submitted five separate incident reports in regard to the smoke alarm being set off in the tenant's unit due to the tenant burning food. Two of these incidents were from April and July 2021 and the three most recently in March 2022.

The landlord testified that a One Month Notice was issued to the tenant back on March 11, 2022, after the door kicking incident but did not follow through on this Notice. The landlord testified that they may not have realized how bad the situation was at that time and they were also going through a change of property managers.

### Analysis

In accordance with section 56 of the Act, in receipt of a landlord's application to end a tenancy early and obtain an order of possession, an arbitrator may grant the application where the tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health and safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property in significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord's property;
  - 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
  - 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.

In addition to showing at least one of the above-noted causes, **the landlord must also show why it would be unreasonable or unfair to the landlord to wait for a One Month Notice for cause to take effect.**

Without making a finding on whether or not the landlord has cause to end this tenancy on any of the above grounds, I find that the landlord has not provided sufficient evidence to meet the latter part of the above test.

In the circumstances as described by the landlord, I find it would not be unreasonable, or unfair to the landlord to wait for a One Month Notice for cause to take effect. An application for an early end to tenancy is an exceptional measure taken only when a landlord can show that it would be unreasonable or unfair to the landlord or the other occupants to allow a tenancy to continue until a notice to end tenancy for cause can take effect. If the matter was as urgent as the landlord now portrays it to be the landlord could have issued a One Month Notice back in February 2022, in fact, the landlord did issue such a notice but did not follow through on it. Similarly, the landlord could have issued a One Month Notice after the repeated smoke alarm incidents in March 2022. Instead, the landlord waited for over one month later and is now requesting an order of possession on an urgent basis. I am not convinced that the matter is now so urgent that the an immediate order of possession be issued without the appropriate Notice to the tenant.

Accordingly, I dismiss the landlord's application for an early end to the tenancy.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

The landlord's 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 *Residential Tenancy Act*.

Dated: June 09, 2022

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Residential Tenancy Branch