



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

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

- an early end to this tenancy and an Order of Possession, pursuant to section 56;

The landlord represented by counsel N.S. and K.V. attended the hearing, while tenants T.D and I.M. attended the hearing, along with advocate T.C. who appeared on behalf of T.D. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the landlord's application for dispute and evidentiary package. The tenants are found to have been duly served with these documents in accordance with section 89 of the *Act*.

### Preliminary Issue – Naming of Parties

Following the outset of the hearing, counsel N.S. explained that he had named Jane and John Doe as respondents. N.S. said that it was his understanding that some other persons had begun to occupy the property, however, he did not know their identities, thus naming Jane and John Doe as respondents.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession via an Early End of Tenancy?

### Background and Evidence

Counsel for the landlord explained this property contained two separate rental units. The first is a cabin that is occupied by I.M. This tenancy began on August 1, 2021 and has a monthly rent of \$700.00 with a \$350.00 security deposit held in trust. The second unit is the "main house" which is rented under two separate agreements. The first is to

T.D. who pays a monthly rent of \$750.00 per month, while the second is rented to J.H. and pays \$650.00 per month. This amount paid by J.H. is unconfirmed because J.H. did not attend the hearing to confirm this.

Counsel stated that he represented the estate of the landlord whose property had been surrendered to the Public Guardian and Trustee ("PGT"). The landlord is seeking an Order of Possession based on the following:

*This is an urgent application about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord and I want an order of possession.*

The application describes the following:

*Ceiling caved in. Asbestos scattered throughout the house as a consequence thereof. Tenant is refusing to vacate the premises despite repeated warnings of asbestos throughout the property.*

A significant volume of evidence was uploaded by the landlord in support of their argument that the home contained asbestos. Counsel for the landlord could not identify the exact reason the ceiling had collapsed, however, all parties agreed this was an older home and the ceiling may have caved-in due to natural deterioration.

The landlord sought to end the tenancy due to frustration and cited section 56.1 of the Act as the basis for doing so.

The landlord provided the following timeline:

- December 2021 – Ceiling collapsed
- January 2022 – Asbestos found on the property
- February 3, 2022 – Letter to tenants warning of asbestos on property
- February 8, 2022 – Letter to tenants warning of asbestos on property
- April 7, 2022 – Assessment of property indicating presence of hazardous materials

Both tenant I.M. and T.D. agreed that there had been a ceiling collapse as described by the landlord. I.M. said the matter did not affect his residence as he lives in a cabin on the property that did not suffer from a similar issue. T.D. argued that she was not exposed to the asbestos because she occupied a suite a floor below where the collapse had occurred.

## Analysis

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice, due to the reasons identified in section 56(2) of the *Act* and that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

The issue of Expedited Hearings is addressed in *Policy Guideline #51*, it notes as follows:

Expedited hearings are usually limited to applications for dispute resolution for:

- an early end to tenancy under section 56 of the RTA
- an order of possession for a tenant under section 54 of the RTA or
- emergency repairs under section 33 of the RTA

This *Guideline* goes on to note:

No other applications are usually considered for an expedited hearing, however there are rare circumstances where an application other than one of those listed above may be set down for an expedited hearing. For example, emergency repairs do not include an inoperable elevator that is preventing a tenant with mobility issues from accessing or leaving their rental unit.

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails because it has not met the threshold for ending a tenancy under section 56 of the *Act*.

Section 56 states:

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.

I find little evidence to suggest that any of the tenants' actions or that of their guests have led to the collapse of the ceiling. While the landlord wished to have this application considered under section 56.1 of the *Act* (which relates to frustrated tenancies), I find this is a different application and not the matter presently before me for consideration. As noted above, per *Policy Guideline #51*, expedited hearings are limited to:

- Early End of Tenancy under section 56 of the *Act* where a landlord may apply to end a tenancy early if a tenant or their guest has engaged in the activities listed above;
- Orders for Emergency Repairs under section 33 of the *Act*; or
- Orders of Possession for Tenant under section 54 of the *Act*.

The landlord may seek future relief under a different application, however, for the purposes of considering the landlord's application for an early end of tenancy, I find the landlord has failed to demonstrate reasons identified in section 56 of the *Act*, the section of the *Act* under which I must consider this application.

For these reasons, the landlord's application is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The landlord's application for an Early End of Tenancy 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 8, 2022

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Residential Tenancy Branch