



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HILDON HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **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 this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the relief sought?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began on September 1, 2015. The current monthly rent is \$546.00 payable on the first of each month. A security deposit of \$262.50 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building of 134 units.

The landlord submits that on June 26, 2022 the tenant threw a mattress out of a 5<sup>th</sup> floor window, hitting the power lines in the alleyway and causing a power outage for the building and the neighboring buildings. The landlord submitted into evidence three recordings from security videos. One, shows the tenant moving a mattress. In that video the tenant is seen moving a mattress into a room at a time stamp of 2:06:19 and emerges from that room at 2:06:28 without the mattress. A second video of the alleyway behind the rental building shows a mattress falling into frame and striking power lines. That video is time stamped 2:19. A third video time stamped 2:19 shows other individuals exiting the room where the tenant was seen taking the mattress and shows the tenant entering the room as well.

The landlord submits that they believe the tenant is the one who hurled the mattress from the upper story window causing power outage for the building and neighborhood. The tenant disputes that they threw any object out of the building and explains that they merely took the mattress to the designated location for garbage.

The landlord also submits that there have been behavioral issues with the tenant but failed to provide any detailed explanation or provide submissions on this point. The landlord submitted into documentary evidence a three-page document which consists of a Commercial Decal Application Form with the municipality and an insurance certificate from ICBC for an individual who is not the tenant nor either of the landlord's agents. The landlord failed to explain how the documents submitted are relevant to the matter at hand.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

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 or be considered by way of an application for dispute resolution.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

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

it would be unreasonable, or unfair to the landlord, the tenant 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.

Based on the evidence of the landlord, including the testimony of their witness and documentary materials, I find that the landlord has failed to provided sufficient evidence to show that there is any basis for the tenancy to end.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the evidentiary onus lies with the landlord. In the present case I find the landlord's submissions consists of conjecture and supposition and vague allegations which are not supported in any documentary evidence and about which the landlord declined to provide details.

I find insufficient evidence to attribute the throwing of a mattress out of the building to the tenant. The video evidence provided by the landlord shows the tenant leaving the room where they placed the mattress at a time stamp of 2:06:28. The second video shows that the mattress falling to the ground at 2:19:14. I find that there is enough of a temporal gap between the incidents, as well as the clear footage of the tenant leaving the room where they placed the mattress, so that the landlord's conclusion that the tenant is the one who threw the mattress is not particularly persuasive. If the tenant is the one who threw the mattress out it would be reasonable to expect the video footage would have no gaps in time.

I further find the landlord's submission regarding the tenant's behaviour to be weak, lack cogent details and not be supported in the documentary materials. The landlord declined to give testimony detailing the issues they have with the tenant's behaviour and while they made reference to documentary evidence such as incident logs, failed to provide any relevant materials in support of their position.

I find that the landlord has failed to establish either individually or cumulatively that there has been any conduct on the part of the tenant that would give rise to a basis for ending this tenancy. Accordingly, I dismiss the landlord's application in its entirety without leave to reapply. This tenancy continues until ended in accordance with the *Act*.

### 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 *Residential Tenancy Act*.

Dated: August 5, 2022

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Residential Tenancy Branch