



# 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 an Application for Dispute Resolution (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the *Act*), on August 3, 2022, seeking:

- An early end to the tenancy pursuant to section 56 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlords Agent/sibling S.B., the Tenant C.R., the Tenant's roommate/spouse J.P, and a witness for the Tenant J.A., all of whom provided affirmed testimony. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding (NODRP), including a copy of the Application and the Notice of Hearing, from their door on August 11, 2022. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of

Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

#### Preliminary Matter #1

The Landlord noted in the Application that the Tenant or persons permitted on the property by the Tenant have dumped garbage repeatedly on the residential premises and an adjoining property, prompting a warning from bylaw enforcement regarding the unsightliness of the premises, however, the Tenant denied these allegations. Further to this, nothing before me, including statements/testimony of the parties, suggested that the unsightliness of the property was such that it would be unreasonable, or unfair to the Landlord or other occupants of the property to wait for a notice to end tenancy under section 47 of the *Act* to be served and enforced for this reason. Section 56 of the *Act* is not intended to allow Landlords to expedite the process of ending a tenancy where another notice to end tenancy, such as a notice to end tenancy under section 47 of the *Act*, would be reasonable under the circumstances. Based on the above, and as I am not satisfied that unsightliness of a premises in-and-of itself meets the requirements set out under either section 56(2) or 56(3) of the *Act*, I asked the parties to restrict their testimony at the hearing to the following matters also claimed in the Application:

- The setting of illegal and dangerous open fires on the property;
- The utterance of threats against another occupant of the residential property (the Landlord's sister C); and
- Whether a firearm was pointed by the Tenant at another occupant of the property.

#### Preliminary Matter #2

The parties disputed receipt of each other's documentary evidence. The Landlord submitted documentary evidence to the Residential Tenancy Branch (the Branch), and the Agent stated at the hearing that they had served the documentary evidence before me on the Tenant at the same time as the NODRP, by posting it to the door of the rental unit on August 10, 2022. The Agent submitted a witnessed and signed Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding from (#RTB-9) for my

review and consideration which states that at 3:00 PM on August 10, 2022, the Agent witnessed a person with the initials M.B. post a “file folder with all necessary documents” to the door of the rental unit. A photograph showing a file folder posted to a wall beside a door was also submitted.

The Tenant and their spouse/roommate J.P. denied receipt of any documentary evidence and I note that no explanation was provided on the #RTB-9 regarding what constitutes “all necessary documents”. Further to this, I note that writing on the exterior of the file folder shown in the photograph lists only 4 things as being included:

- Tenancy Fact Sheet for Expedited Hearings;
- Dispute Resolution Services Order;
- Respondent Instructions for Expedited Hearings; and
- Notice of Dispute Resolution Hearing.

Based on the above and given the affirmed testimony of the Tenant and J.P. that no documentary evidence was received, I find that the Landlord and/or the Agent has failed to satisfy me on a balance of probabilities that the documentary evidence was served on the Tenant in accordance with rule 10.3 of the Rules of Procedure. As a result, I therefore find that it would be significantly prejudicial to the Tenant and a breach of both the Rules of Procedure and the principles of procedural fairness and administrative justice, to accept them for consideration. As a result, I have excluded them from consideration. Having made this finding, I will now turn to the matter of the Tenant’s documentary evidence.

The Tenant and J.P. initially stated that they had not served any documentary evidence on the Landlord or the Branch in relation to this hearing and requested permission to submit evidence for my consideration during or after the hearing. When I advised them about the evidence service and submission timelines set out under rule 10.5 of the Rules of Procedure, and how to serve documentary evidence, they reversed their previous testimony stating that they had posted it to the Landlord’s door approximately three days prior to the hearing. The Agent testified that neither they nor the Landlord had received any documentary evidence from the Tenant. When I asked the Tenant why they had initially advised me that they had not served any evidence on the Landlord or the Branch in relation to this hearing, they stated that they were confused, as they had been unable to upload documentary evidence for my consideration due to the large file size of the documents.

Based on the conflicting testimony of the Tenant and J.P. regarding the service of documentary evidence, the affirmed testimony of the Agent that no documentary evidence was received, and in the absence of any documentary evidence corroborating that documentary evidence was served on the Landlord, I find that the Tenant has failed to satisfy me on a balance of probabilities that documentary evidence was served on the Landlord in accordance with rule 10.4 of the Rules of Procedure. As a result, decline the Tenant's request to submit the documentary evidence they alleged had been served on the Landlord to the Branch for my consideration.

### Issue(s) to be Decided

Is the Landlord entitled to an early end to the tenancy pursuant to section 56 of the *Act*?

### Background and Evidence

TEXT

### Analysis

Section 56 of the *Act* states the following:

56(1) A landlord may make an application for dispute resolution requesting

- (a) an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) an order granting the landlord possession of the rental unit.

56(2) 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.

56(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.

The Agent argued that the Landlord has grounds to end the tenancy under section 56 of the *Act*, for the following reasons I am not satisfied that they do. Although the Agent argued that the Tenant or persons permitted on the residential property by the Tenant had:

- Set illegal and dangerous fires on the property;
- Uttered threats against another occupant of the residential property (the Landlord's sister C); and
- Pointed a firearm at another occupant of the property A;

However, the Tenant, the Tenant's partner J.P. and the witness J.A., who stated that they are also a resident of the property, denied these claims. Additionally, the Agent submitted no documentary evidence in support of the above noted claims, nor did they call any witnesses in support of them.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, and that the onus to prove their case is on the person making the claim. I therefore find that it was incumbent upon the Landlord or the Agent to satisfy me on a balance of probabilities that the Tenant or a person permitted on the property by the Tenant, not only engaged in at least one of the activities listed under section 56(2)(a) of the *Act*, but that it would also be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect, pursuant to section 56(3) of the *Act*. Where both parties provide affirmed testimony contradictory to each other, I find

that I must turn to the documentary and other evidence before me from the parties, and in particular the party with the burden of proof, to resolve this conflict. As no documentary evidence was submitted by the Landlord or the Agent in support of the above noted allegations and considering the affirmed testimony to the contrary from the Tenant, the Tenant's spouse/roommate, and the witness J.A., I therefore find that the Landlord has failed to satisfy me on a balance of probabilities that they occurred.

Finally, the Agent mentioned on numerous occasions that the Landlord is terminally ill and in the final days of their life, and that they simply wish to sell the property, at least in part to assist the Landlord's son, who is also an occupant of the residential property, to access a form of medical treatment. As a result, I have concerns that the Landlord and/or the Agent may be attempting to use section 56 of the *Act* to expediently end the tenancy for reasons other than those stated in the Application.

Based on the above, I therefore dismiss the Landlord's Application seeking to end the tenancy early pursuant to section 56 of the *Act* for the reasons stated in the Application, without leave to reapply.

### Conclusion

The Landlord's Application is dismissed 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 25, 2022

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Residential Tenancy Branch