



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding A & T MANAGEMENT CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FF

### Introduction

This hearing convened to deal with the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act and to recover the cost of the filing fee.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlord's evidence and that he did not file evidence. The tenant confirmed receipt of the landlord's application.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the landlord entitled to end this tenancy early without the requirement of a One Month Notice to End Tenancy?

Is the landlord entitled to an Order of possession and to recover the filing fee?

### Background and Evidence

The tenancy began on or about May 1, 2018. The rental unit is in a multi-unit apartment building, which shares common space with three other apartment buildings. However, the other apartment buildings are separately owned and managed, according to the landlord.

The reason supporting the landlord's application was based on the following:

*The health and safety has been severely jeopardized for all tenants in the building as well as all other tenant from other buildings on the same common property. The police had been called in as the tenant fired a gun from his living room apartment and shot his sliding glass door out. From the inside of his apartment to the common area parking lot. The gun was later thrown out into the main parking lot. Glass shattered.*

[Reproduced as written from application]

The landlord testified that the tenants in her building and tenants in other buildings have come to her to say they are worried about their safety due to the tenant's actions. The landlord said that the tenant came to her door on the afternoon of August 20, 2022, and started banging. He then departed her unit and proceeded to two other buildings. It was reported to the landlord that he approached these two other tenants by going to their door and banging, accusing these tenants of watching him.

The landlord said that on the night of August 20, 2022, at around 9:05 pm, the landlord heard loud bangs and went to investigate. Other tenants came out of their units to see what the loud bangs were about, and they discovered that the sliding door in the tenant's rental unit was smashed. The tenants told her that the tenant shot out the glass with a gun. The landlord said she called the police, who attended the residential property that night. After 2, or so hours, the tenant was taken away by ambulance and did not return for 5 days. The landlord said that the police stayed for a few hours and talked to other tenants.

The landlord said that she entered the tenant's rental unit that night as she needed to secure the unit and make sure the tenant's cat was safe. She then called a glass company later on, who came on August 22, 2022, to replace the glass door. The landlord said there was glass everywhere and she took pictures of the damage, which have been filed in evidence. The landlord said that the police smashed the glass further in order to access the rental unit. The landlord filed photographs of the state of the rental unit from the night in question, including one which showed the smashed glass and of what looked to be illegal drugs.

In a written statement filed in evidence, the landlord wrote that the tenant fired a gun through the sliding glass door from inside his apartment, which caused all of the other tenants to live in fear of endangerment and dangerous and violent, aggressive behaviour.

The landlord said the tenant has accused many other tenants of watching him.

#### **Tenant's response –**

The tenant said there was a girl from across the way who was watching him with binoculars and that all the other tenants are looking at him.

The tenant said that he did not fire a gun and does not have one. The tenant said that he tripped and his head and shoulder went through the sliding glass door, which caused him to lose consciousness. The tenant said he was taken by ambulance to the hospital where he remained unconsciousness for 3 ½ days, coming home on the 5<sup>th</sup> day.

The tenant said that he was unsure why he tripped inside the apartment.

The tenant pointed out he was not arrested.

#### **Analysis**

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act states:

**56** (1) A landlord may make an application for dispute resolution to request an order

(a) 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) granting the landlord an order of possession in respect of the rental unit.

(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.**

[emphasis added]

Residential Tenancy Branch Policy Guideline PG-51 [Expedited Hearings] provides further clarification at part B:

*... there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an **imminent danger to the health, safety, or security of a landlord or tenant**, or a tenant has been denied access to their rental unit. (bold emphasis added)*

*...*

*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 onus to prove their case is on the person making the claim, the landlord in this case. The standard of proof is on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 56 of the Act lays out a 2-step process. The second part of the test is that it would 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.

In the case before me, I find the landlord submitted insufficient evidence that the tenant used a gun to shoot through the sliding glass door. For instance, no photographs, witness statements evidencing gun use, or police reports were submitted. Additionally, the fact that the tenant was taken from the residential property in an ambulance rather than a police car, I find supports that the tenant was not arrested for using a gun. I find this supports the tenant's version of events that a gun was not used.

In addition, although the landlord said that other tenants were fearful of the tenant, there were no other tenant statements filed in evidence or witnesses attending the hearing to provide testimony to support the landlord's application.

Given the above, I therefore find that there was insufficient evidence of imminent danger to the health, safety, or security of a landlord or another tenant or occupant.

The landlord did not provide specific evidence relating to a claim that the tenant caused extraordinary damage to the residential property, and therefore, that matter was not considered.

For these reasons, I therefore find the landlord submitted insufficient evidence to meet the high bar needed to end this tenancy earlier than to wait for a one month notice to end the tenancy under section 47 of the Act.

I **dismiss** the landlord's emergency application due to insufficient evidence, without leave to reapply.

The filing fee is not granted as a result.

The tenancy shall continue until ended in accordance with the Act.

The landlord is at liberty to issue a 1 Month Notice.

### Conclusion

The landlord's application fails due to insufficient evidence and is dismissed without leave to reapply as a result.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 24, 2022

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Residential Tenancy Branch