



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on August 9, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on September 8, 2022 as a teleconference hearing. The Landlord's Agent attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 20 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenant on August 26, 2022 by posting it to the Tenant's door. The Landlord provided a witnessed proof of service, as well as a picture of the documents being posted to the door in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence three days later, on August 29, 2022. The Tenant did not submit documentary evidence in response to the Application.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The Landlord's Agent testified that the tenancy began on February 1, 2021. Currently, the Tenant is required to pay rent in the amount of \$1,425.00 which is due to the Landlord on the first day of each month. The Landlord stated that the Tenant paid a security deposit in the amount of \$712.50 which the Landlord continues to hold. The Landlord stated that the Tenant continues to occupy the rental unit.

The Landlord's Agent stated that from early into the tenancy, the Landlord has received multiple warning from the Strata relating to incidents caused by the Tenant and his guests. The Landlord's agent recalled instances between July 5, 2021 and November 3, 2021 during which the Strata notified the Landlord of the following incidents;

- July 5, 2021, the Tenant tracked drywall debris on his work boots throughout the building, resulting in the Landlord incurring a Strata fine;
- July 7, 2021, the Tenant was observed being intoxicated on substances and depicting unusual behaviour;
- July 13, 2021, the Tenant tracked Gyproc mud to his unit, hallway, and laundry room;
- August 1, 2021, an extension cord was found plugged into a hallway outlet that lead to the Tenant's rental unit;
- August 6, 2021, Tenant tracked gyprock mud to his unit, hallway, and laundry room;
- November 2, 2021, Tenant had a medical emergency in the parking lot. The Tenant's guests became confrontational and threatened members of the Strata counsel;
- November 3, 2021, Tenant was observed attempting to break into the mailboxes, resulting in the Landlord incurring a Strata fine.

The Landlord's Agent stated that the Tenant has been provided with several written warning letters, which the Landlord submitted in their documentary evidence. The Landlord has also provided letter from the Strata relating to the Tenant's contraventions of the Bylaws.

The Landlord's Agent stated that while the Landlord has not provided evidence in support of the most recent incidents, the Tenant has continued to breach Strata Bylaws by allowing guest to enter the building with a dog. The Landlord's Agent stated that the Tenant's guests are rude and at times can be heard yelling from the parking lot to gain entry in the building.

The Landlord's Agent referred to an email from a Police Officer which highlights concerns relating to constant stream of people coming and going from the rental unit, drug deals being witness in the parking lot and inside the building, strung out people around the property, residents being harassed, multiple thefts from mailboxes which can be traced back to the Tenant's guests, and items being jammed into door locks.

The Landlord's Agent stated that she has served the Tenant with a One Month Notice to End Tenancy dated June 14, 2022 with an effective date of July 15, 2022. The Landlord's Agent stated that she had agreed to let the Tenant stay an extra month as it was difficult for the Tenant to find alternate accommodations.

The Landlord's Agent stated that the above noted issues continue to be a problem, therefore, the Landlord is seeking an early end to the tenancy. If successful, the Landlord is also seeking the return of the filing fee.

### Analysis

Based on the unchallenged documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which 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...*

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.***

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlord's Agent recalled many issues relating to the Tenant and their guests' actions throughout much of the tenancy. I find that the length of time that it has taken the Landlord to seek the end of the tenancy, demonstrates that this situation does not meet the threshold of immediate and severe risk.

I find that while the Landlord may have sufficient cause to end the tenancy based on the One Month to End Tenancy for Cause, the Landlord has provided insufficient evidence

to demonstrate that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect.

I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act. In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

### Conclusion

The landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue until ended in accordance with the Act.

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: September 08, 2022

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Residential Tenancy Branch