



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes: ET FFL

### **Introduction**

The landlord seeks an order to end a tenancy and an order of possession under section 56 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the application filing fee under section 72 of the Act.

Attending the dispute resolution hearing were the landlord, the tenant, and a witness for the tenant. As the witness was not required to testify, they were not affirmed, and their name is not recorded on this decision.

The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

### **Issues**

1. Is the landlord entitled to orders under section 56 of the Act?
2. Is the landlord entitled to recover the filing fee cost?

### **Background and Evidence**

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

This tenancy began on September 1, 2015. Monthly rent is \$2,050.00 and is due on the first day of the month. There is a \$1,000.00 security deposit and a \$1,000.00 pet damage deposit in trust. A copy of the written tenancy agreement was in evidence.

The landlord seeks orders under section 56 of the Act, because", as written in their application for dispute resolution:

Upon inspection, makeshift kitchen was found in basement, electrical overload/fire is a major concern, tenant had me over twice for circuits not working, I told her to remove all extra cooking appliances. Inspected last night and found there are now 2 extra refrigerators in the basement plus Microwave, toaster oven, hot plate, kettle, air fryer and toaster all running off a power bar (pictures included) These items are for her "tenants" to use, her current tenants were not authorized by me[.]

The landlord further testified that he has had to visit the property twice to deal with electrical problems, and there are "more and more" cooking utensils being used by the tenant and her roommates/tenants. There is a makeshift kitchen in the downstairs laundry room (a photograph of the room was in evidence).

The landlord testified that he has witnessed burnt wiring, and he is very concerned about a house fire being a risk. He further added that the house has mostly (perhaps 50-60%) aluminium wiring, with some modifications having been made. There is, he remarked, too much load on the home's electrical system. There is a circuit breaker box and the fuses or breakers "pop" frequently

Last, the landlord summarized that the many appliances present a fire hazard and there is also a risk with his homeowner's insurance, partly related to the number of "unauthorized" tenants or occupants in the property. He is, he stated, "at risk of losing the entire structure."

The tenant testified that the appliances have always been there. A few occupants have added things such as a rice cooker. The power bar referred to by the landlord (and for which a photograph is in evidence) has a breaker switch. The tenant confirmed that she has had to flip the breaker switch a "few times"—perhaps four times in the past three years.

The tenant keeps a fire extinguisher in the downstairs laundry room-cum-kitchen for added safety. She further testified that the two "fridges" consist of one refrigerator that was placed in the room in the spring of 2016 and one deep freezer that was put in the room in the spring of 2018. They have been there since.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord's application is made under section 56(1) of the Act, which states that 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.

To grant the orders under this section, section 56(2)(a) and (b) of the Act states that an arbitrator must be satisfied, on a balance of probabilities, that a tenant or a person permitted on the 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.

In this case, while the landlord is rightly concerned about the risk of a fire, there is insufficient evidence that a few extra appliances and a power bar raises the spectre of a fire into the realm of possibility. The house wiring is half aluminum, which itself is not an issue except at connection points. The landlord testified that modifications were made to the system. Both parties acknowledged that the circuit breaker has tripped over the years. Thus, the circuit breaker would appear to be working.

And while the landlord referred to two burnt wires, there is no documentary evidence to support this claim or, more importantly, help explain how the tenant's or other occupants' actions might have caused the burning. Nor is there any evidence, such as an inspection report from a certified electrician, or a fire department hazard report, to persuade me to find that there does, in fact, exist a significant risk to the property.

Taking into consideration all the evidence before me, it is my finding that the landlord has not proven, on a balance of probabilities, that there exist any of the criteria listed in subsection 56(2)(a). As such, I must respectfully dismiss the landlord's application for orders under section 56 of the Act. The landlord's claim to recover the cost of the application filing fee is also dismissed.

Last, while the number of occupants in the rental unit itself does not, I find, create a direct risk to the landlord's property, the tenant should be aware that a landlord has the legal right to restrict the number of non-tenant occupants in a rental unit: a landlord has the right to end a tenancy under section 47(1)(c) if there are an unreasonable number of occupants. Similarly, a tenant must obtain the written consent of a landlord if they intend to assign or sublet a rental unit (see section 34 of the Act).

### Conclusion

**The application is hereby dismissed, without leave to reapply.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 10, 2022

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Residential Tenancy Branch