Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **ET FFL**

Introduction

This hearing was reconvened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an early termination of the tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this application pursuant to section 72.

The original hearing of the Application was held on August 11, 2022 at 9:30 am ("Original Hearing"). The hearing was scheduled for a 60-minute period. However, by 61 minutes, it became clear that the parties would not be able for complete their testimony and rebuttals. As a result, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the Original Hearing and issued a decision dated August 11, 2022 ("Interim Decision"). The Interim Decision stated that the parties were not permitted to serve, or submit to the Residential Tenancy Branch ("RTB"), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for August 30, 2022 at 11:00 am ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord and two agents ("LH" and "TC") for the Landlord, two of the Tenants ("AK" and "FZ") and an advocate for the Tenants ("NS") attended the Original Hearing and the Adjourned Hearing. At the Original Hearing, I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Two witnesses ("SO" and "KO") attended the Adjourned Hearing to provide testimony on behalf of the Landlord.

At the Original Hearing, TC stated the Notice of Dispute Resolution Proceeding and the Landlord's evidence (collectively the "NDRP Package") was served on each of the Tenants by registered mail on July 22, 2022. TC submitted into evidence completed Forms RTB-5 and the Canada Post tracking numbers to corroborate her testimony on service of the NDRP Package on each of the Tenants. I find the NDRP Package was served on each of the Tenants pursuant to sections 88 and 89 of the Act.

Preliminary Matter – Late Service of Tenants' Evidence

The original hearing of the Application was held on August 11, 2022 at 9:30 am ("Original Hearing"). The Original Hearing was scheduled for a 60-minute period. However, by 61 minutes, it became clear that the parties would not be able for complete their testimony and rebuttals. As a result, pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the Original Hearing and issued a decision dated August 11, 2022 ("Interim Decision"). The Interim Decision stated that the parties were not permitted to serve the other party, or submit to the Residential Tenancy Branch ("RTB"), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing ("Adjourned NDRP"), scheduled for August 30, 2022 at 11:00 am ("Adjourned Hearing"), were served on the parties by the RTB.

The Landlord, the Landlord's two agents ("LH" and "TC"), two of the Tenants ("AK" and "FZ" and the Tenants' advocate ("NS") the Original Hearing and the Adjourned Hearing. At the Original Hearing, I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Two witnesses ("SO" and "KO") attended the Adjourned Hearing to provide testimony on behalf of the Landlord.

At the Original Hearing, TC testified the Landlord served the Notice of Dispute Resolution Hearing and her evidence ("NDRP Package") on each of the three Tenants by registered mail on July 22, 2022. TC submitted into evidence the Canada Post tracking number stubs for service of the NDRP Package on each the Tenants to corroborate her testimony. NS acknowledged the Tenants received the NDRP Package. I find that each of the Tenants were served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Late Service of Tenants' Evidence

At the Original Hearing, NS stated the Tenants served their evidence on the Landlord by registered mail on August 4, 2022. TC stated the Tenants' evidence package was not available at the post office for pickup until the afternoon of August 9, 2022. Pursuant to section 90 of the Act, the Landlord was deemed to have received the Tenants' evidence five days after the date of mailing. NS admitted that none of the Tenants' evidence was unavailable at the time that the Tenants were required to serve their evidence on the Landlord and submit it to the RTB. FZ stated that, when she received the NDRP Package, she thought it related to a dispute resolution proceeding between the parties that has been scheduled for hearing in October 2022 and did not realize until later that it was for the hearing today.

Rules 10.4 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

> **10.5 Time limit for respondent's evidence**
>
> The respondent must ensure evidence they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and at least two days before the hearing.

Pursuant to section 90 of the Act the Landlord was deemed to have received the Tenants' evidence five days after the date of mailing, being August 9, 2022. TC stated the Landlord received the Tenants' evidence on August 9, 2022. The last day for service of the Tenants' evidence was August 8 2022, being 2 days prior to the day of this hearing. As such, the Tenants' evidence was served late.

Rules 10.6 and 3.17 of the RoP state:

> **10.6 Late evidence**
>
> If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.
>
> **3.17 Consideration of new and relevant evidence**
>
> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution],

> 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
>
> Both parties must have the opportunity to be heard on the question of accepting late evidence.
>
> If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

NS admitted that none of the Tenants' evidence was unavailable on or before the time the Tenants were required to serve it pursuant to Rules 10.5. The fact that FZ neglected to carefully the NDRP Package when she received it does not change the requirements for service of the Tenants' evidence in accordance with Rule10.5. As such, I find the Tenants' evidence is inadmissible for this hearing. I advised NS, AK and FZ that, although the Tenants' evidence inadmissible for the hearing, the Tenants nevertheless had the opportunity of providing, or all witnesses to provide, testimony on the contents of the Tenants' evidence.

Issues to be Decided

Is the Landlord entitled to:

- an early termination of tenancy and Order of Possession?
- entitled to recover the filing fee for the Application from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or

arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

TC stated that the residential property consists of two side-by-side duplexes. TC stated that, although the duplexes have different civic addresses, the residential property is recorded on one State of Title Certificate in the BC Landlord Title registry. One duplex is occupied by the Tenants while the other duplex is occupied by SO and KO (collectively the "Other Occupants"). TC stated the Other Occupants moved into the adjoining duplex at the beginning of January 2022. TC stated the Landlord could not locate a copy of the tenancy agreement. The Landlord and Tenants agreed the tenancy commenced on September 1, 2000 with rent of $1,2000.00 payable on the 1st day of each month. The parties agreed the rent is now $1,540.00 per month. FZ stated the Tenants paid $600.00 for a security deposit but TC disagreed. As the payment of a security deposit is not relevant to the issues before me, I do not make a finding on whether a security deposit was paid by the Tenants to the Landlord or the amount of any deposit the Tenants paid.

In the Application, the Landlord stated:

> [Redacted] RCMP attended rental unit 6 times from Feb 2022 & advised this file be expedited eviction & possession order as POLICE force is constantly being called and making false statements. These tenants have vandalized the unit, keep harassing the new neighbors and the landlord's family. They keep disturbing everyone 24/7. [FZ] plays obscene recordings, bangs on walls, video tapes tenants. The unit is severely damaged, its not wear & tear, they vandalized it, & tampered with electrical wires

TC submitted a written submission ("Written Submissions") into evidence, which was served on the Tenants with the Landlord's evidence, that provided further particulars on the reasons the Landlord claimed were cause for ending the Tenancy. As these details were not incorporated into the Application, I will only deal with several of the reasons for cause to end the tenancy provided in the Written Submissions that TC referred to during the hearing.

TC stated the Tenants have caused extraordinary damage to the rental unit, such as painting walls black and putting holes in the walls. TC claimed the Tenants have engaged in illegal activities that, in the Landlord's view, were acts of vandalism. TC stated the Tenants have painted walls with oil paint in black which

will make it difficult to remove and they have made holes in the walls. TC stated that, as a result of the damages caused by the Tenants, the rental unit will require a complete renovation. TC submitted into evidence photos of the walls in the rental unit that showed black paint on two walls while the majority of the paint on the walls was yellow or off-white. The photos showed several areas in which there were small holes.

TC submitted a photograph of a car parked on the residential property and stated it was uninsured. TC stated the Tenants had tampered with the electrical wiring. TC submitted into evidence photos showing electrical wires running along a floor and wires running across some of the ceilings in the rental unit. TC stated there was a microwave and hotplate located in the laundry area plugged into a power bar. TC submitted into evidence a photo of the hotplate and microwave plugged into a power bar to corroborate her testimony. TC stated an electrician had recently performed repairs in the rental unit and had told the Landlord there were too many items plugged into the outlets and that it was a fire hazard. AK stated the microwave and hotplate were moved to the laundry area while he isolated from his family when he had COVID. AK stated he did not use the microwave or hotplate while he was isolated.

The Landlord stated the Tenants engaged in illegal activities that have caused damage to the landlord's property, adversely affected the quiet enjoyment, security safety or physical well-being of another occupant of the residential property and jeopardized a lawful right or interest of another occupant or the Landlord. The Landlord stated the damages caused to the rental unit were acts of vandalism by the Tenants or their guests.

The Written Submissions contained a claim that the Tenants changed the locks on the doors and had refused to give the Landlord access to the rental unit. The Tenants did not dispute this claim. The Landlord did not provide any evidence that she had given the Tenants a written notice requiring access to the rental unit or that she had given the Tenants a written request that the Tenants provide her with a key.

The Written Submissions included a claim that the Tenants have not done any gardening and that a blackberry bush has overgrown the driveway.

KC stated the Tenants have significantly interfered with or unreasonably disturbed and seriously jeopardized the health or lawful right or interest of the other tenants living next door to the rental unit. KC stated the previous tenants in the adjoining rental unit vacated the rental unit as a result of the noise disturbances caused by the Tenants.

SO stated that he and his brother KO moved into the rental unit on January 1, 2022. SO stated the Tenants have disturbed him and KO over a period of five months. SO stated the Tenants conduct was malicious. SO stated the RCMP attended at their rental unit six or seven times as a result of calls made to the RCMP by the Tenants. SO stated the RCMP woke him up one night when he had COVID-10 because the Tenants call the RCMP about being disturbed by SO snoring. SO stated that he has been disturbed as a result of the Tenant's placing clocks with buzzers and chimes on the other side of his bedroom wall. SO stated he was prescribed a sleeping medication by his doctor. SO stated the noise disturbances have diminished since about May 2022. SO stated one of the Tenants stood outside the Other Occupants' rental unit and took a video their living room at night and then sent the video to the Landlord. The Landlord did not submit a copy of that video into evidence. SO stated he has been told by the RCMP that they will no longer attend at the residential property as they no longer believe the complaints made by the Tenants about him and KO. KO corroborated SO's testimony on the noise disturbances caused by the Tenants. KO stated the noise disturbance started shortly after he and SO moved into their rental unit. KO admitted the noise disturbances have decreased since the end of May 2022.

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. In this case, the onus is the Landlord to establish on a balance of probabilities that it is entitled to an order for an early end of the tenancy.

The conditions that must be met for a tenancy to be ended early are set out in subsections 56(2) and (3) as follows:

Application for order ending tenancy early

(2) The director may make an order specifying the date on which the tenancy ends and the effective date of the order of possession only if satisfied that

(a) the tenant or a person permitted in the manufactured home park 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.

(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.

Residential Tenancy Branch Policy Guideline ("RTBPG") *Number 51* [Expedited Hearings] provides guidance on a landlord's application for dispute resolution to seek for an early end of tenancy pursuant to section 49 of the Act. The following excerpts of that Policy are relevant to the Landlord's application:

> The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.
>
> 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 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 Landlord did not submit a copy of a conditional move-in inspection to establish the condition of the rental unit before the Tenants moved into it. The Tenants have occupied the rental unit for 22 years and the Landlord has not provided any evidence she has made any repairs or renovations to the rental unit, such as repainting, since the Tenants moved in. As such, it is very difficult to determine whether the general condition of the rental unit is the result of normal wear and tear as opposed to deliberate damage caused by the Tenants or the failure of the Landlord to perform routine maintenance from time to time. The Landlord submitted pictures of the two doors under the kitchen sink are missing and there are some small nail holes and several large holes in the walls. The Landlord submitted photos of dark paint applied on some walls and ceilings. However, the Landlord did not provide any testimony on the last time the Landlord had the rental unit repainted. The Landlord submitted a photo of a broken window that was taped over. The Landlord did not submit any evidence that she had given the Tenants a written notice in which she requested the Tenants repair the window and that, after given the Tenants a reasonable time to repair the window, they have refused or neglected to repair the window. As such, I the Landlord has failed to establish, on a balance of probabilities, that the Tenants have caused extraordinary damage to the rental unit.

TC submitted a photograph of a car parked on the residential property and stated it was not insured. The Landlord did not provide a copy of a written tenancy agreement. As such, there is no evidence that the Tenants are not permitted to keep the car on the residential property or that it must be insured.

The Written Submissions included a claim that the Tenants have not done any gardening and that a blackberry bush has overgrown the driveway. *Residential*

Tenancy Policy Guideline 1 ("PG 1") clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning and repairs of residential property. PG 1 states in part:

> **PROPERTY MAINTENANCE**
>
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
> 3. *Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.*
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
> 5. *The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.*
> 6. *The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes* and common areas of manufactured home parks.
>
> [emphasis in italics added]

The Tenants are residing in one-half of a duplex and, as such, PG 1 provides that the Tenants are not generally responsible for yard maintenance. The Landlord did not provide a copy of a written tenancy agreement. As such, the Landlord has not demonstrated the Tenants were responsible for yard maintenance. Based on the foregoing, I find the Tenants have not seriously jeopardized an interest or lawful right of the Landlord.

The Landlord submitted photos of wires running along the ceiling and along the floor of the rental unit and argued that they placed the rental unit at risk. TC stated an electrician who recently went to the rental unit to fixed problem commented the Tenants had too many things plugged into the outlets and that the Tenants wire were a fire hazard. However, TC did not submit a letter or report from the electrician to verify that these wires were putting the Landlord's property at risk. As such, I find

the Landlord has failed to establish that the Tenants have put the Landlord's property at significant risk.

TC stated the Tenants engaged in illegal activities that has caused damage to the landlord's property, adversely affected the quiet enjoyment, security safety or physical well-being of another occupant of the residential property and jeopardized a lawful right or interest of another occupant or the Landlord. TC stated the damages caused to the rental unit were acts of vandalism by the Tenants or their guests. However, TC did not submit any evidence, or call any witnesses, to corroborate her submissions that the Tenant or other persons allowed on the residential property engaged in any illegal activities. Furthermore, the Landlord did not provide, as required by PG 13, a legible copy of the relevant statute or bylaw to establish the illegality the Landlord has asserted.

Section 32 of the Act states:

> 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Landlord did not submit a signed move-in condition inspection report to establish the condition of the rental unit before the Tenants move in. As such, I am unable to determine the condition of the rental unit was before the Tenants moved into it and how much is reasonable wear and tear that has occurred over 22 years of occupancy by the Tenants. TC did not provide any testimony or evidence to show if the Landlord has performed any repairs or renovations to the rental unit, such as repainting the unit, since the Tenants moved in to demonstrate that she has complied with section 32(1) of the Act. The photographs submitted by the Landlord showed several walls have been painted black, some small holes in the walls, a broken window and missing cabinet doors under the kitchen sink. I note that most of the walls shown in the pictures are painted yellow or off white. I do not find these damages to constituted "extraordinary damages" as that expression is used in section 56(2)(a)(v) of the Act. As such, I find the Landlord has not established, on a balance of probabilities, that the Tenants have caused extraordinary damage to the residential property. I also note, the Landlord did not submit any evidence that she has given the Tenants a written notice requiring that they repair and repaint the

walls and holes, replace the broken window or reinstall the missing cupboard doors under the kitchen sink.

The Landlord submitted photos of wires running along the ceiling and along the floor of the rental unit and argued that they placed the rental unit at risk. AK stated that the wires that run along the ceiling and floor are for cable television. The Landlord did not submit a report from an electrician to verify that the Tenants had tampered with the electrical wiring or that the wires the Tenants have run along the ceiling or the floors constitute a risk to the Landlord's property. As such, I find the Landlord has not established, on a balance of probabilities, that the Tenants has put the Landlord's property at significant risk.

TC also stated the damages the Tenants caused to the rental unit were vandalism and constituted illegal activities The Landlord stated the Tenants engaged in illegal activities that has caused damage to the landlord's property. *Residential Tenancy Policy Guideline 32* ("PG 13") provides guidance on relevant issues such as the meaning of "illegal", which may constitute "illegal activity" and circumstances under which termination of the tenancy may be considered. PG 13 states in part:

> The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.
>
> The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party *should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*
>
> In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants. would justify termination of the tenancy.
>
> For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's

> property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy. On the other hand, a chemical drug manufacturing operation (e.g., methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.
>
> [emphasis in italics added]

The Landlord did not provide, as required by PG 13, a legible copy of the relevant statute or bylaw to establish the Tenants have engaged in illegal activities on the residential property. As such, I find the Landlord has failed to establish, on a balance of probabilities, that the Tenants have engaged in illegal activities on the residential property that would constitute cause to end the tenancy pursuant to section 56(2)(a)(iv) of the Act.

The Written Submissions contained a claim that the Tenants changed the locks on the doors and had refused to give the Landlord access to the rental unit. The Tenants did not dispute this claim. The Landlord did not provide any evidence that she had given the Tenants a written notice requiring access to the rental unit or that she had given the Tenants a written request that the Tenants provide her with a key. In the absence of the Landlord providing a copies a written notices to the Tenants, in which she demanded the Tenants provide her with access to the rental unit or provide a replacement key, I do not find the Tenants have seriously jeopardized a lawful right or interest of the Landlord.

The Landlord argued the Tenants have significantly interfered with or unreasonably disturbed and seriously jeopardized the health or lawful right or interest of the other tenants living next door to the rental unit. SO stated that he and his brother KO moved into the rental unit on January 1, 2022. SO stated the Tenants have disturbed him and KO over a period of five months. SO stated the RCMP attended at their rental unit six or seven times as a result of calls made to the RCMP by the Tenants. SO stated the RCMP woke him up one night when he had COVID-19 because the Tenants called the RCMP about being disturbed by SO's snoring. SO stated he has been disturbed a number of times as a result of the Tenants placing clocks with buzzers and chimes on the other side of his bedroom wall. SO stated he was prescribed a medication by his doctor so that he could sleep. SO stated the noise disturbances have diminished since about May 2022. SO stated one of the Tenants stood outside the Other Occupants' living room windows and took a video of the living room. SO stated the Tenants sent a copy of the video to the Landlord.

SO stated he has been told by the RCMP that they will not attend at the residential property anymore as they no longer believe the complaints made by the Tenants about the Other Occupants. KO corroborated SO's testimony on the noise disturbances caused by the Tenants that started shortly after he and SO moved into their rental unit. KO stated the noise disturbances have abated since the end of May 2022. I find the Landlord has established, on a balance of probabilities, that the Tenants have significantly interfered with, or unreasonably disturbed the Other Occupants in breach of section 56(2)(a)(i) of the Act.

Ending a tenancy pursuant to section 56 may have extreme consequences for a tenant or tenants. The Tenants have occupied the rental unit for 22 years while the Other Occupants have only occupied the adjoining rental unit for eight months. Based on the very lengthy occupancy of the Tenants in the rental unit compared to the relatively short occupancy of the Other Occupants in the adjoining rental unit, I believe that I must exercise some deference to ending this tenancy pursuant to section 56. Both SO and KO testified that the noise disturbances are not as bad since May 2022 as they were before. SO stated he is now able to sleep at night. In these circumstances, I find it would not be unreasonable, or unfair to the Landlord or the Other Occupants to wait for a notice to end the tenancy under section 56(2)(b) of the Act. As such, I find the Landlord has not satisfied the requirement set out in section 52(2)(b) of the Act. Based on the foregoing, I find the Landlord has not established she is entitled to an early end to the tenancy pursuant to section 56 of the Act. Accordingly, I dismiss the Application without leave to reapply.

As the Landlord has not been successful in the Application, I dismiss, without leave to reapply, her claim for reimbursement of the filing fee for the Application.

Conclusion

The 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: September 8, 2022

Residential Tenancy Branch