



# 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 ("Application") under the *Residential Tenancy Act* ("Act"), for an early termination of the tenancy and an order of possession – as the Landlord says the Tenant poses an immediate and severe risk to people and/or property. The Landlord also claims recovery of their \$100.00 Application filing fee.

An advocate for the Tenant, T.H. ("Advocate"), and an agent for the Landlord, C.H. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Advocate and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Advocate said he had received the Application and the documentary evidence from the Tenant, and had reviewed it somewhat prior to the hearing. The Advocate confirmed that the Tenant had not submitted any documentary evidence to the RTB or to the Landlord.

### Preliminary and Procedural Matters

The Landlord provided their email addresses in the Application, and the Advocate provided his address in the hearing. The Parties confirmed these addresses in the hearing, and they also confirmed their understanding that the Decision would be

emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Should the Landlord be granted an early end to the tenancy and an order of possession of the rental unit?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 20, 2022, and is scheduled to run to July 31, 2023, and then operate on a periodic basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,395.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$697.50, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit in full.

In the hearing, the Agent explained the Landlord's claim, as follows:

The Tenant on multiple occasions, has allowed non-residents into the building. He has held back the door for multiple people to enter; he has left door open for other people to come and go. The Tenant has allowed non-residents to use the laundry facilities.

Recently, other tenants witnessed him or a guest of his pouring a burning ashtray onto the ground outside the suite. It started a fire, and the fire department was called to put the fire out. The Tenant put other tenants and the building at risk.

The Advocate responded:

The Tenant received a 30 Day Notice to End the Tenancy for Cause ["30 Day Notice"], and on September 3<sup>rd</sup>, he fought against the 30 Day Notice that was served on August 26<sup>th</sup>; the hearing is scheduled for January 23, 2023.

The Tenant had a chance to defend himself against the 30 Day Notice, but the Landlord is trying to not give him an opportunity to defend himself here. He was surprised with the early end application. The Landlord's main reason is as mentioned in the 30 Day Notice, that he was seen pouring burning ashes out of the suite window. This reason was used by the Landlord to evict another tenant in the same building who lives [next door]. The other tenant is [J.M.] and he was pushed out for the same reason.

The evidence provided by the Landlord in the emails from other tenants is not clear – there are no details - and the Landlord can't use the same reason to evict the two tenants.

An eviction notice was filed by the Landlord for same reason against [J.M.] who lives [next door], and that tenant received a One Month Notice for same reasons and filed for dispute resolution. But the Landlord filed for early tenancy ending for that tenant, and they obtained an order of possession.

The Agent said:

There was a witness who actually saw the ashes being poured from the Tenant's unit onto the ground. See the email as evidence from [D.P.] who lives [on the fourth floor]. And on August 26, he sent an email to [M.R., another agent] about the Tenant.

I asked the Agent further about the other tenant who the Advocate said was evicted for the same reason as the Tenant, and the Agent said:

It is related to fire, but on two different levels. Their toaster was on fire and smoke was billowing down hallways, and in their unit, and that tenant was sitting on the couch when the fire department arrived. They took the toaster outside the unit; it was red hot. With [the Tenant before me] it was ashes poured out. Yes, they are both related to fire, but they are very different situations.

I asked the Advocate if the Tenant denies that burning ashes were poured out of his unit window, as alleged. The Advocate said that he has no answer to this. He noted that the Tenant suffers from a serious head injury and that communicating with him is challenging. The Advocate said: "He didn't give an obvious answer. It is hard to understand him, because of his head injury."

The Advocate then asked the Agent some questions, as follows:

The Advocate asked if the suites for the two evictions he mentioned are on the same level - are next to each other. The Agent said "Yes, they are."

The Advocate then asked how the witness can define from which suite window the burning ashes were poured, and from where was this witnessed. The Agent responded:

On the following pages in the evidence given, you can see that the way the building works - the patio doors look into the common areas. You can see from the upper level - you can see outside of lower window directly.

The Advocate confirmed with the Agent that the witness viewed this from the fourth floor. The Advocate questioned how the witness could see this from the fourth floor. The Agent said: "I just know that this was the information provided. Were they in their unit at the time - probably a floor above, but I don't know."

The Landlord submitted an email from [D.P.], a tenant who lives on the fourth floor of the residential property, which said: "On Thursday August 25 I observed the tenant pouring burning ashes out his window."

The Landlord also submitted a photograph of dry grass smouldering outside a residential property window identified by the Agent as being the Tenant's rental unit. Another photograph shows fire fighters spraying water on the burned ground outside this window.

I asked the Agent why it would it be unreasonable, or unfair to the Landlord or other occupants of the residential property, to wait for the 30 Day Notice to end the tenancy to take effect? The Agent said:

Two reasons. First, he has not paid rent in two months. Second, because of his behaviour - he continues to follow a pattern of allowing people in who are not allowed, providing facilities to non-residents, keeping doors propped open, ashes thrown on the ground.

The Advocate replied:

Why did the Landlord serve the Tenant with the 30 Day Notice, and then apply for an early tenancy ending? I believe the Tenant should have had time to

prepare for the hearing he filed for, and the Landlord mentioned unpaid rent and this is unrelated.

I offered the Parties an opportunity to make any last statements before I ended the hearing. The Agent said:

I think based on the evidence from someone who lives in the building that they viewed ashes thrown out on the ground, and photos of fire department putting the fire out is evidence enough that there is some risk to the property

The Advocate said: "The witness statement not enough to support the Landlord's complaint."

### Analysis

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

In order to establish grounds to end a tenancy early under section 56 of the Act, a landlord must not only establish that they have cause to end the tenancy, but that it would be unreasonable or unfair to require the landlord to wait for a notice to end the tenancy under section 47 of the Act to take effect. Having reviewed the testimony of the Parties, I find that the Landlord has met this burden.

I accept the Agent's undisputed evidence that the Tenant or someone he allowed on the property to have significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property, by pouring burning ashes out of the rental unit window onto dry grass below. I find that such behaviour, along with fire department having to be called to put out the resulting fire would cause the Landlord, and the other Tenants to be to be significantly interfered with or unreasonably disturbed. I also accept the Tenant's behaviour put the Landlord's property at significant risk. As noted by the Advocate, the claim that the Tenant has not paid rent for two months is irrelevant to my considerations in this matter.

Due to these conclusions, I find that the Landlord has proven that the Tenant has significantly interfered with or unreasonably disturbed another occupant and the Landlord, as well as put the Landlord's property at significant risk.

I am also satisfied that it would be unreasonable and unfair to the Landlord to wait for

the 30 Day Notice to take effect, as I find without an early end to the tenancy, they are less likely to be able to preserve their property, and other tenants would continue to be at risk from this Tenant's behaviour.

I, therefore, grant the Landlord's Application to end this tenancy early, pursuant to section 56 of the Act, as well as their request to recover the \$100.00 Application filing fee, pursuant to section 72 of the Act.

I grant the Landlord an **Order of Possession** for the rental unit, **effective two days after deemed service on the Tenant**, pursuant to section 56 of the Act. Further, the Landlord is authorized to deduct \$100.00 from the Tenant's \$697.50 security deposit in complete satisfaction of the award.

### Conclusion

The Landlord's Application is successful, as the Agent provided sufficient evidence to prove their claim on a balance of probabilities.

Pursuant to section 56, the Landlord is granted an **Order of Possession effective two days after service on the Tenant**.

The **Landlord is also awarded** recovery of their **\$100.00** Application filing fee from the Tenant for this matter. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit, in complete satisfaction of this monetary award.

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: October 18, 2022

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Residential Tenancy Branch