



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by PS and VS and assisted by agent RD (the landlord). Tenant SA and agent GK (the tenant) represented tenant RH. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Preliminary Issue – Correction of the tenants' name

At the outset of the hearing the tenant corrected the spelling of SA's last name.

Pursuant to section 64(3)(a) of the Act, I have amended the landlord's application.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on February 01, 2022. Monthly rent is due on the first day of the month. At the outset of the tenancy a security deposit of \$850.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates that monthly rent is \$1,700.00.

The landlord affirmed that monthly rent is \$1,700.00. The tenant stated that monthly rent is \$1,750.00.

The landlord testified he is seeking an order for the early termination of the tenancy because the rental unit is illegal and unliveable, and the local government ordered the landlord to take action to legalize the rental unit. The landlord said the tenants have not been paying rent and are accumulating materials in the rental unit.

Landlord VS affirmed that the tenants threatened and assaulted her, and the police attended. VS does not remember when the assault happened.

The landlord confirmed twice that the landlord is seeking an order for the early termination of the tenancy because the suite is illegal and unliveable.

The tenant stated she did not assault or threaten landlord VS and that on June 30, 2022 landlord VS assaulted the tenants. The tenant testified the landlord submitted this application because the rental unit does not comply with the city bylaws.

## Analysis

The landlord has applied to end the tenancy for cause without giving the tenant a one month notice to end tenancy. This is provided for in section 56(2) of the Act, where it states:

(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.

Residential Tenancy Branch Policy Guideline 51 explains the importance of the landlord providing evidence of the tenant's serious breach and that it would be unreasonable or unfair to wait to end the tenancy with a one month notice:

**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).**

**Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:**

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

I accept the landlord's uncontested testimony that he is seeking an order for the early termination because the suite is illegal and unliveable.

Not paying rent and an order from the local government to legalize the rental unit are not reasons to terminate a tenancy under section 56 of the Act. The landlord may consider serving a notice to end tenancy under section 46 or 47. Accumulation of garbage and assault may be reasons to seek an order of possession under section 56. I find the testimony provided by landlord VS about the assault was vague. The tenant denied the assault. Furthermore, the landlord did not explain why it would be unreasonable or unfair to wait for a notice to end tenancy under section 47 of the Act.

I note the landlord confirmed twice that he is seeking to terminate the tenancy because the rental unit is illegal and unliveable. The landlord does not sustain the rental unit is unliveable because of the tenants' actions.

Considering the above, I find the landlord failed to prove, on a balance of probabilities, that the tenants or a person permitted on the rental unit by the tenants, did any of the actions listed in section 56(2)(a) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

As the landlord is not successful in this application, the landlord must bear the cost of the filing fee.

### Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues 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: October 11, 2022

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Residential Tenancy Branch