



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET

### Introduction

The Landlord seeks an order pursuant to s. 56 of the *Residential Tenancy Act* (the “Act”) for the early termination of the tenancy and an order of possession.

N.O. and D.B. appeared as agents for the Landlord. The Tenant did not attend the hearing, nor did someone attend on his behalf.

The Landlord’s agents affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

I was advised by N.O. that the Landlord’s application and evidence was served via registered mail sent on December 8, 2022. I have been provided with a tracking receipt by the Landlord. N.O. confirmed that the tracking information shows that the Tenant retrieved the package on December 22, 2022. I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act*.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

### Issue to be Decided

- 1) Is the Landlord entitled to an order of possession without issuing a notice to end tenancy?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agents confirmed the following aspects with respect to the tenancy:

- The Tenant began to occupy the rental unit on May 15, 2021.
- Rent of \$3,039.92 is due on the first day of each month as per a rent increase that took effect on July 1, 2022.
- A security deposit and pet damage deposit of \$1,497.50 each was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

I am advised that the Landlord has received various noise and disturbance complaints from other tenants at the building with respect to the Tenant's conduct, including incidents involving fireworks and a stereo speaker on the balcony and many guests coming and going from the property. The Landlord's evidence includes emails of complaints from other tenants, the first of which is dated December 21, 2021 and the most recent being from November 29, 2022 and December 1, 2022.

I was further advised that the Landlord has issued a One-Month Notice to End Tenancy and was provided with a file number on that matter, showing it is coming on for hearing on January 10, 2023. As part of the hearing for that application, there are two others in which the Tenant filed to dispute a One-Month Notice and a 10-Day Notice to End Tenancy. At the hearing, the agents admit that the One-Month Notice deals with issues which are cited by the Landlord at the present application.

I enquired with the agents what precipitated the application, which was filed with the Residential Tenancy Branch on December 2, 2022, when the parties are scheduled for a hearing in a little under two-weeks time. I was advised by the agents that the complaints of December 1, 2022 and November 29, 2022 triggered the application such that the Landlord and the other residents could not wait any longer.

The email of November 29, 2022 appears to be from a property manager for the Landlord, G.G., sent to Landlord's agents that attended the hearing. In the email, G.G. details a discussion they had with tenants that lived on the same floor as the Tenant.

Complaints were raised of a “commotion” over the weekend, including screaming and fighting between the Tenant’s girlfriend and mother. Further allegations are made that the Tenant and his girlfriend “are smoking crack in the unit” and that “weird people [are] coming in and out of [rental unit]”.

The email of December 1, 2022 is again from G.G. sent to the Landlord’s agents that attended the hearing. In that email, G.G. says they ran into a tenant who lives the same tower as the Tenant, though G.G. cannot remember his unit number but that “he’s the guy that’s at the gym all the time”. G.G. says that this other tenant reported to her that he was at the mailbox the previous night getting his mail when a “young lady that smelled like she was from the streets came to the mail area seeming like she was on drugs asking him if he knew which mail box he has”. A discussion is reported to have taken place, with the young lady saying she lives in the Tenant’s rental unit. The other tenant is reported to have been suspicious that the young lady was eyeing up packages in the mailbox area.

I am told by the Landlord’s agents that packages were stolen from the mailbox area at the building. The Landlord’s evidence includes screenshots of surveillance cameras showing a package in front of mailboxes and an individual identified by the Landlord’s agent as an unauthorized occupant with the box at the elevator.

D.B. testified that the fire suppression system on the Tenant’s floor had been vandalized in November 2022. It was reported from the fire department and the repair person that the system had been deliberately damaged. D.B. suspects the Tenant was responsible given the other instances that have occurred and that, according to D.B., the Tenant is in construction. D.B. also admits that he did not have any concrete evidence tying the Tenant to the damage to the fire suppression system.

The Landlord’s agents indicate that the Tenant continues to reside within the rental unit.

### Analysis

The Landlord seeks an order of possession without issuing a notice to end tenancy.

The Landlord applies for an early termination of the tenancy pursuant to s. 56 of the *Act*. A landlord may end a tenancy early under s. 56 where a tenant or a person permitted on the residential property by the tenant:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- put the landlord's property at significant risk;
- engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property,

These grounds, as set out in s. 56(2)(a), mirror those found within s. 47(1)(d) to (f). The key difference between ss. 47 and 56 is that under s. 56(2)(b) a landlord is not required to issue a notice to end tenancy on the basis that it would be unreasonable or unfair to the landlord or other occupants of the residential property to wait for a one-month notice given under s. 47 to take effect.

Policy Guideline #51 sets out, at page 4, that applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. Policy Guideline 51 provides examples, including acts of assault, vandalism, production of illegal narcotics, and sexual harassment.

In this instance, the Landlord makes a series of allegations regarding the Tenant's conduct and that of his guest. The issue with the Landlord's claims is that I have been provided scant evidence supporting the allegations. I have no direct evidence from the complainant tenants, whether as witnesses at the hearing or in statements. What I have been provided with is an email sent from one of the Landlord's employees to another set of employees in which it is reported that certain complaints were made.

I note that pursuant to s. 75 of the *Act*, the formal rules of evidence pertaining to admissibility do not apply to proceedings before the Residential Tenancy Branch. Proceedings before the Residential Tenancy Branch are, by design, conducted on a summary basis and s. 75 of the *Act* is meant to ensure a degree of flexibility in having matters adjudicated, particularly since most of the parties are self-represented. However, the Landlord seeks an order of possession pursuant to s. 56 of the *Act*, which is for urgent circumstances where there is a clear and present threat to people and property.

Within this context, I would expect direct evidence from the tenants who made the complaints. Indeed, one of the other tenant's is merely identified as the "guy that's at the gym". The Landlord alleges that the Tenant damaged the fire suppression system on mere suspicion alone, though at least acknowledging that there was no concrete evidence to support the allegation. The application filed by the Landlord is for gravely serious matters and require sufficient evidence to support the allegations. I find that the Landlord has failed to do so under the circumstances.

The direct evidence I do have are two photographs of a package that is said to have been taken by an individual who lives within the rental unit. I have no evidence to support that the individual does, in fact, live within the rental unit. Perhaps it is some other person unrelated to this matter or another tenant. For all I know it is the intended recipient as I have not been provided with a statement from the recipient saying their package was stolen.

What appears likely is that the Landlord issued two notices to end tenancy and grew impatient in having that matter heard in its proper time. I note that on the file I was given, the Landlord filed its application on September 1, 2022. The agents admit that the One-Month Notice that has been issued deals with the same issues currently cited by the Landlord in this application. I find it likely that the Landlord is attempting to jump the queue to have the matter dealt with in a more expeditious manner.

I find that the Landlord has failed to provide sufficient evidence to support that it would be unreasonable or unfair to wait for a One-Month Notice to take effect. Indeed, this application appears to have been filed well after the Landlord issued a One-Month Notice dealing with the same issues, directly undermining the urgency of the application.

I make no findings with respect to the substantive allegations, which is a matter to be dealt with by the arbitrator adjudicating the matter on January 10, 2023.

### Conclusion

The Landlord's application under s. 56 of the *Act* is dismissed without leave to reapply. The tenancy shall continue until it is 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: December 29, 2022

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Residential Tenancy Branch