



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ET, FFL**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- An order to end the tenancy early due to circumstances where it would be unreasonable, or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause to take effect pursuant to section 56; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both landlords attended the hearing, as did the tenant CS and the other occupants of the rental unit, DE and MT. The respondents acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Issue(s) to be Decided

Should the landlord be granted an order to end the tenancy early?

Can the landlord recover the filing fee?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord (LB) testified that rental unit is a 2-bedroom unit located in a building with over 100 units. The tenancy began in 2018 and the tenancy agreement does not allow for sublets or assignments of the tenancy. The landlord testified that the tenant is cognitively challenged and is a ward of the public guardian and trustee.

The landlord's witness testified that he is the tenant's support worker. The tenant texted him on December 2<sup>nd</sup>, advising that there are people in his unit that refuse to leave. The tenant signed a tenancy agreement with the 2 people, naming himself as the landlord and the 2 others as tenants. According to the witness, the 2 occupants have threatened to lock up food. The tenant is currently suffering from stress and anxiety and wants them gone.

The tenant CS testified that he signed a tenancy agreement with the 2 others, naming himself as landlord. He has never left the tenancy, he still occupies the rental unit together with the other 2, acknowledging them as roommates. He has not received any of the rent money promised to him on the tenancy agreement. He is not coping well, is highly stressed and wants them out. They have not physically harmed him, they just stress him out.

The occupant DE testified that they met the tenant CS on September 2022 and the tenant told them he owns the rental unit. CS and his partner were going to sell the unit to get a house and that he wanted both DE and the other occupant, MT to become the tenants in his apartment. Both occupants were under the impression from the tenant that he was the owner and they wouldn't have entered into the tenancy agreement with him if they had known he was a renter. DE submits that the tenant has brought in

multiple roommates in the past and that there are currently 4 people living there: the tenant, his partner, M.T. and herself.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause.

In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.
- 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;
- engaged in illegal activity that 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;
- engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, **and**

**it would be unreasonable, or unfair to the landlord, the tenant 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 considering the evidence before me, I find that the tenant CS has not done any of the above. Consequently, the application seeking an early end to the tenancy with CS is dismissed without leave to reapply.

Alternatively, the landlord seeks to have the additional occupants in the rental unit removed while retaining the original tenant. Residential Tenancy Branch Policy Guideline PG-19 [Assignments and Sublets] states:

### ***Occupants/roommates***

*Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act.*

Based on the evidence before me, the tenant has not sublet or assigned his tenancy agreement. He has obtained roommates.

Turning to PG-27 [Jurisdiction], part 4 notes:

***DISPUTES BETWEEN TENANTS AND ROOMMATES***

*The RTA gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the RTA. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.*

*For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the RTA would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the RTA. The director will decline jurisdiction to resolve these types of disputes.*

...

*Depending on the particulars, the Civil Resolution Tribunal may have jurisdiction to resolve disputes between tenants and roommates.*

While I understand that both the tenant and the landlord seek to end the “tenancy” with the roommates, I find I lack the jurisdiction to do so. If the landlord seeks to end the

tenancy with the original tenant for one of the reasons provided by section 47 of the Act, the landlord must serve the tenant with a 1 Month Notice to End Tenancy for Cause.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The application seeking an early end to the tenancy with the original tenant CS is dismissed without leave to reapply. I find the parties D.E. and M.T. are occupant/roommates and have no rights or responsibilities under the *Residential Tenancy 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: January 09, 2023

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Residential Tenancy Branch