



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the landlord applied on February 1, 2023 to:

- end a tenancy early, pursuant to section 56 of the Act; and
- recover the filing fee from the tenant, pursuant to section 72 of the Act.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified she did not receive a copy of the landlord's evidence. The landlord testified she served her evidence on the tenant by registered mail on February 3, 2023, but did not provide a tracking number or other proof of service.

Rule 3.5 states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and the Rules of Procedure. As the tenant stated she did not receive the landlord's evidence and the landlord did not provide proof of service, I have not considered the landlord's documentary evidence in the decision.

Neither party raised an issue regarding service of any other hearing materials.

### Preliminary Matter

In a previous hearing, as noted on the cover page, an arbitrator ordered the landlord to retain the services of a licensed tradesperson to inspect and, as required, repair the wood stove in the unit.

### Issues to be Decided

- 1) Is the landlord entitled to an early end of tenancy and an order of possession?
- 2) Is the landlord entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began June 15, 2022; rent is \$500.00, due on the first of the month; and the tenant paid a security deposit of \$250.00, which the landlord still holds.

The landlord testified that on October 11, 2022 a WETT-certified wood stove cleaner said the wood stove in the unit was unsafe for use as it has two cracks in it and its pipes are too close to flammable surfaces. WETT stands for Wood Energy Technology Transfer; the landlord explained this certification designates qualified professionals who work with wood stoves.

The landlord testified she brought in a qualified wood stove installer to look at the stove and provide a repair quote, and that the installer also said the wood stove was not safe for use. The landlord testified she let the tenant know the installer's findings.

The landlord testified she purchased a wood pellet stove and piping to replace the wood stove, but the tenant would not accept it, and would not discuss the matter with the landlord.

The landlord testified the tenant is still using the old wood stove. The landlord testified she knows this to be the case because she has seen smoke coming from the stack and because the tenant's boyfriend chops wood for the stove. The landlord testified that she did not know when she last saw smoke coming from the stack of the rental unit, and that she thinks she hears wood being chopped every day.

The tenant testified she did permit tradespeople to enter the unit many times, and that she was told by a tradesperson that the stove was not cracked. The tenant testified they did use the stove in November and December 2022, but have not used it in January or February. The tenant testified they have instead been using a new electric heater. The tenant submitted that the landlord has no proof she observed smoke coming from the stack. The tenant testified her boyfriend is not chopping wood every day.

The tenant testified she objected to the pellet stove as she understood it would be installed on top of the wood stove, and that the rental unit structure would not safely support the weight. The landlord testified the pellet stove would not be installed on top of the wood stove, and that it is a separate install and has its own piping.

### Analysis

The landlord has applied to end the tenancy early, pursuant to section 56 of the Act. As the tenant testified she did not receive the landlord's evidence, and the landlord did not provide proof of service, I have not considered the landlord's documentary evidence in the decision.

Section 56(2) states (emphasis added):

(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 [Policy Guideline 51. Expedited Hearings](#) states that the expedited hearing process has been established for circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit.

Rule 6.6 states that 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 on the landlord.

The landlord alleges the tenant is putting the landlord's property at significant risk because the tenant continues to use a wood stove that has been deemed unsafe by certified professionals as it is cracked and its piping is positioned too close to flammable materials.

The landlord testified she knows the tenant continues to use the wood stove because the landlord thinks she hears the tenant's boyfriend chopping wood every day, and the landlord has seen smoke coming from the stack. The landlord testified she did not know when she last observed smoke from the rental unit.

The tenant testified she was told by a tradesperson that the stove was not cracked. The tenant testified they have not used the wood stove in January or February, and instead are using a new electric heater. The tenant testified her boyfriend is not chopping wood every day.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on the landlord's testimony that she cannot recall when she last saw smoke from the rental unit's stack, and the landlord's lack of documentary evidence in support of her claim that the tenant continues to use a wood stove which is unsafe, I find, on a balance

of probabilities, the landlord has failed to demonstrate there is an imminent danger to the health, safety, or security of the landlord or a tenant.

Therefore, I dismiss the landlord's application for an early end of tenancy, pursuant to section 56 of the Act.

As the landlord is unsuccessful in her claim, I decline to award the filing fee.

### Conclusion

The landlord's application is dismissed; the tenancy will 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: February 23, 2023

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Residential Tenancy Branch