



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **ET, FFL**

### **Introduction**

This is an application by the landlord to end the tenancy early by way of an expedited hearing and seeking;

- an order of possession for the subject residential property pursuant to section 55 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

The landlord's agent RG attended the hearing. For the purposes of this decision I will refer to RG as the landlord. The tenants did not attend. The landlord present was given a full opportunity to be heard, to present her sworn testimony and to make submissions under oath.

The hearing was conducted by conference call. The landlord confirmed she was not recording the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord advised that the dispute notice and evidence package was served on the tenants. The package was posted to the door of the rental unit on February 2, 2023., The landlord advised that she had a witness with her at the time of service and that she filled out a proof of service form but did not upload it in evidence. I find that the tenants are deemed served on February 5, 2022 in accordance with sections 88, 89, and 90 of the Act.

### **Issue(s) to be Decided**

1. Is the landlord entitled to an order ending the tenancy early?
2. Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced June 30, 2019 on a month to month basis. Rent is currently \$1,370.25 and the landlord still holds a security deposit of \$625.00 in trust for the tenants. The tenants still occupy the rental unit.

In November 2022 there was an incident at the rental unit that required the attendance of the police. The landlord produced a news article dated November 29, 2022 in evidence describing the incident. The landlord testified that they were advised by the police that the tenants had a visitor who attended at the rental unit and broke several windows. The neighbors contacted the police, who responded. The landlord produced photos of the broken windows in evidence.

On January 4, 2023 the landlord RG testified that she attended at the rental unit accompanied by the police. The purpose of attending was to gain entry to the unit to inspect the damage. The tenant SH refused entry stating that she had covid. The landlord attempted to gain entry to the rental unit, however the locks on the back door to the rental unit had been changed and the front door was barricaded. The landlord testified that the police then advised her not to attempt to gain entry to the rental unit and to pursue other avenues.

The landlord has applied for an expedited end to the tenancy because a number of windows at the rental unit remain broken and they are unable to gain access to the rental unit. The landlord is concerned for the condition of their property given the current winter freezing temperatures and is concerned about rain and snow entering the residence and causing significant damage to the rental unit.

### Analysis

In an application to end a tenancy early pursuant to section 56 of the Act. The landlord bears the onus of establishing that:

- the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and
- that it would be unreasonable to require the landlord to wait for a notice to end the tenancy under section 47 of the Act.

I find that the refusal of the tenants to permit the landlord access to the rental property to assess the damage and protect their property may seriously jeopardize a lawful right

or interest of the landlord. However, the landlord did not take immediate steps to end the tenancy when the windows were broken in November 2022 but instead waited until January 2023 to file an application to end the tenancy on an expedited basis. I find this raises questions around the urgency of the matter.

Therefore, I find that the landlord has not satisfied the second part of the test outlined in section 56 of the Act. The landlord has not established that it would be unreasonable for the landlord to be required to wait longer for a notice to end tenancy under section 47 to take effect. Given the delay between the time the windows were broken and the time the application was made, I find that the circumstances do not require the tenancy to be ended on an expedited basis as there has already been significant delay in the matter.

The landlord's application is dismissed.

As the landlord is not successful in their application, they are not entitled to recover the filing fee of \$100.00.

### Conclusion

The landlord's application is dismissed. 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: February 22, 2023

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Residential Tenancy Branch