



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on October 1, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession to end a tenancy early for immediate and severe risk; and
- a monetary order granting the recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the Tenants confirmed receipt of the Notice of Hearing and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Tenants confirmed that they did not submit any evidence in response to the Application.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for early termination, pursuant to Section 56 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified that the tenancy began on November 1, 2018. Currently, the Tenants pay rent in the amount of \$1,872.68 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00. The Tenants continue to occupy the rental unit.

The Landlord is seeking an early end to the tenancy based on immediate and severe risk. The Landlord stated that the Application was made in response to Tenants' ongoing smoking on the property, noise, fighting, unreasonable number of occupants, and swearing. The Landlord stated that other occupants at the rental property are moving out as a result of the Tenants' actions.

The Tenants responded by acknowledging that their son had been causing some problems in the rental unit, however, he passed away in November 2022, therefore, there are no further issues relating to noise and fighting. The Tenants stated that they had been permitted to smoke outside on the rental property and that the Landlord has never raised concerns about this prior to the Application. The Tenants stated that the Landlord also smokes outside and will sometimes join the Tenants to smoke together outside.

The parties testified that the Landlord has also served the Tenants with a One Month Notice to End Tenancy for Cause, which the Tenants have disputed. The parties have a future hearing to discuss the validity of the Notice.

### Analysis

Based on the documentary evidence and oral testimony, and on a balance of probabilities, I find:

Section 56 of the *Act* permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the *Act*. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the *Act*, which states:

*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...*

- (a) The tenant or a person permitted on the residential property by the tenant had 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 landlords 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.***

The causes for ending the tenancy early, as listed above, are identical to the causes for which a Landlord can end a tenancy by serving a One Month Notice to End Tenancy for Cause. The difference between this process and a determination on whether the Landlord has the grounds to end the tenancy for cause is that when a Landlord seeks to end the tenancy earlier than would occur had a One Month Notice to End Tenancy for Cause been served, the Landlord must also prove that it would be unreasonable or unfair to the Landlord or other occupants to wait for the One Month Notice to End Tenancy for Cause to take effect. In other words, the situation created by the Tenant must be extreme and require immediate action.

In this case, the Landlord has applied for an order of possession to end the tenancy early based on immediate and severe risk. During the hearing, the Landlord indicated that the reason for seeking an order of possession was in relation to ongoing concerns regarding noise, fighting, swearing, smoking, and an unreasonable number of occupants.

Based on the testimony and evidence before me, I am not satisfied that the situation is so urgent that it should end earlier than a One Month Notice to End Tenancy for Cause would normally take effect. I find that the Landlord failed to provide sufficient evidence that this tenancy should end pursuant to Section 56 of the Act.

In light of the above, I dismiss the Landlord's Application, without leave to reapply.

As the Landlord was not successful with their Application, the Landlord is not entitled to recover the filing fee from the Tenant.

Conclusion

The Landlord has issued a one month notice to end tenancy for cause; however, they had insufficient evidence to prove it should end earlier under section 56. The tenancy will continue until 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 13, 2023

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Residential Tenancy Branch