



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an order to end the tenancy early and obtain an Order of Possession under section 56 of the Act.

The landlord and tenant appeared for the hearing and were affirmed. The tenant was also assisted by an Advocate.

The hearing was held over two dates and an Interim Decision should be read in conjunction with this decision. As seen in the Interim Decision, I permitted the landlord to evidence that was served before the first hearing date, but late; and I adjourned the hearing so as to provide the tenant time to review the late evidence and I authorized the tenant to provide additional rebuttal evidence during the period of adjournment. At the reconvened hearing, I confirmed the tenant did not provide any additional materials during the period of adjournment.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Both parties called witnesses to testify and the witnesses were subject to direct examination and cross examination.

On another procedural matter, the landlord and tenant had provided submissions that went back several months; which I did not permit. Given the nature of this application and the remedy sought, I limited the submissions to the event(s) that occurred on January 31, 2023.

Issue(s) to be Decided

Has the landlord established that the tenancy should end early and the landlord should be provided an Order of Possession under section 56 of the Act?

Background and Evidence

The tenancy started on October 6, 2019 and the tenant is currently required to pay rent of \$1100.00, plus \$150.00 for utilities, on the first day of every month. The landlord collected a security deposit of \$550.00. The rental unit is described as being an apartment in small apartment building owned and managed by the landlord.

The tenant occupies in the rental unit with his female roommate, referred to as KC in this decision.

Below, I have summarized the parties' respective positions concerning the events that transpired on January 31, 2023.

***Landlord's position***

The landlord testified that other tenants in the building contacted him to report that the tenant beat up his female roommate on January 31, 2023 and the police attended the property. There were also complaints that the other tenants could smell smoke coming from the rental unit.

The landlord did not personally witness any of the events that took place on January 31, 2023. The landlord has largely relied upon information and evidence he was provided by other occupants of the building. T

The landlord provided written statements of other occupants of the building and photographs of KC.

The landlord called three witnesses to testify at the hearing, as seen below.

**Witness JD**

Witness JD testified that occupies a rental unit one floor up from the rental unit, but not directly above the rental unit. JD testified that she heard two large thumps and two

distant screams at approximately 3:00 p.m. on January 31, 2023. JD was uncertain as to what had caused these noises so she did not take any further action.

### **Witness AS**

Witness AS occupies a unit one floor up from the rental unit but not directly above the rental unit. AS testified that at approximately 3:00 p.m. on January 31, 2023 she was at work and received a message from her partner, who was in their unit, and a neighbour residing in the unit above the rental unit that their had been an altercation in the subject rental unit between the tenant and KC and the police had been called.

AS contacted the landlord to inform him of what she had heard.

AS testified that as she arrived at the residential property she saw and spoke with KC, who was sitting outside of the building. AS saw a large welt on KC's forehead. KC appeared to be in significant pain and expressed concern she may have a concussion. KC stated to AS that the tenant had hit her.

AS contacted the landlord again to update him on the information she had obtained and described KC's injuries to the landlord.

### **Witness NR**

Witness NR was an occupant in the rental unit directly above the rental unit on January 31, 2023 but has since moved out at the end of February 2023.

NR testified that he was at home when he heard KC yell out "Help me! Help me!" from the subject unit below. NR also heard KC sobbing. NR called 9-1-1 immediately and the police arrived shortly after.

The landlord argued that given the physical violence exhibited by the tenant, the landlord seeks to end this tenancy on an urgent basis to protect the health and safety of the occupants of the building. The landlord stated his other tenants have expressed to him that they are afraid of the tenant. The landlord stated that one of his tenants is an elderly lady. The landlord suggested that future violence by the tenant may result in death or physical harm to the tenant's roommate or other occupants of the building.

### ***Tenant's position***

The tenant was asked to describe in his own words what took place on January 31, 2023. The tenant testified that he had been pushing some tables around in the rental unit but nothing more than that. The police arrived after someone called them. The police talked to him and KC but KC stated she did not want to press charges against him and the police left without any charges being laid against anybody.

As far as the smoke, the tenant explained that was from grease burning on the stove element. The tenant testified that they do a lot of cooking and there is grease on the stove element as a result of cooking.

The tenant called witnesses to testify, including his roommate KC and his long term girlfriend.

### **Tenant's roommate and witness KC**

KC initialled described the event of January 31, 2023 as a "domestic issue" with her roommate and the police were called by the upstairs neighbour.

KC described two police cars and three police officers arriving at the rental unit. The police officers spoke with both KC and the tenant. Neither she, nor the tenant, wanted to press charges. The tenant then left the rental unit for a couple of hours.

I asked KC to describe what she meant by "domestic issue" to which she responded it was a "physical altercation" between the tenant and her.

KC testified that the situation started when she saw the tenant reaching into her purse to take money from it. KC went over to the tenant to have what was supposed to be a discussion about the rent but it turned physical quickly and it was all over in about 10 seconds.

KC stated that there was mutual pushing of each other and that she ended up falling, hitting the fan, and the floor and KC ended up with a large "goose egg" on her forehead. KC did not know whether the lump was the result the tenant's hand striking her, her hitting the fan or hitting the floor with her head.

KC acknowledged that she spoke with the woman who lived in the unit above them because that woman asked if she was ok. After that the landlord started contacting her about the incident.

KC acknowledged that she had sent pictures of her forehead to the woman upstairs but that she did not consent for the photographs to be shared with the landlord.

KC acknowledged that she likely did call out for help and that she was crying as she lay on the floor because of her injury and because she could not believe what just happened as a result of what should have been a discussion between her and the tenant.

KC acknowledged seeing AS outside of the building as AS was coming in to the building. KC showed AS the bump but KC did not recall any further details other than to say she and the tenant got into an “altercation.”

KC acknowledged that she has an interest in seeing this tenancy continue as she does not have alternative living accommodation. KC stated she is more concerned about her future living arrangements than living with the tenant. KC stated there have been no previous or further incidents with the tenant other than that of January 31, 2023.

### **Tenant’s girlfriend and witness RK**

RK testified that she has been the tenant’s girlfriend for approximately 11 years. RK lives in a different town than the tenant but has spent two nights at the rental unit. RK was not at the rental unit on January 31, 2023 and did not have any first hand knowledge of what transpired on that date.

RK described how the tenant had been complaining about hearing noises and voices in prior months and that the landlord was not responding to the matter other than to suggest the tenant call the police. RK was unaware of any medical issues that would have caused the tenant to hear such things. RK encouraged the tenant to reach out to an advocacy group for further assistance, which he did.

The tenant’s Advocate argued that there is insufficient evidence to end the tenancy under this application and that if the landlord had wanted to end the tenancy for cause that one would expect to see warning letters be issued to the tenant first. Further, the

altercation was between two roommates and questioned the threat to other tenants on the property especially considering there have been incidents before or after this one.

### Analysis

Under section 56 of the Act, the Director, as delegated to an Arbitrator, may order the tenancy ended earlier than if the landlord had issued a One Month Notice to End Tenancy for Cause ("One Month Notice") and grant the landlord an Order of Possession. The landlord must demonstrate cause for ending the tenancy and that it would be unreasonable to wait for a 1 Month Notice to take effect.

Below I have reproduced section 56 of the Act:

- 56** (1) A landlord may make an application for dispute resolution to request an order
- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
  - (b) granting the landlord an order of possession in respect of the rental unit.
- (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.

[My emphasis underlined]

Section 47 of the Act provides a mechanism for landlords to bring a tenancy to an end where the tenant has given the landlord cause to end the tenancy. A notice given under section 47 affords the tenant ten days to dispute the One Month Notice or at least one full move to vacate the rental unit. Section 56 also requires that the tenant has given the landlord cause to end the tenancy; however, the seriousness of the alleged offence(s) or conduct permits the landlord to have the tenancy ended without the time afforded to the tenant under section 47. Accordingly, section 56 is intended to apply in the more urgent and severe circumstances and applications filed under section 56 of the Act are processed as an “expedited hearing”.

In the matter before me, the landlord alleged that the tenant physically assaulted and caused injury to KC’s forehead. The tenant did not acknowledge any physical altercation taking place and merely described pushing furniture around on that date.

The landlord bears the burden of proof. The burden of proof is the civil standard, which is: on a balance of probabilities, or more likely than not. The civil standard is much less than the criminal standard of “beyond a reasonable doubt”.

The tenant’s roommate ordinarily resides in the rental unit, with the tenant, and I consider the tenant’s roommate to also be an “occupant” of the residential property in giving “occupant” its ordinary meaning. As seen under section 56(2)(a)(i) and (ii), a tenant who unreasonably disturbs another occupant, or seriously jeopardizes the health

or safety of another occupant, is cause to end the tenancy. Therefore, I find it necessary to determine whether the tenant assaulted and/or caused physical injury to his roommate as I would consider such action as being an unreasonable disturbance and putting the occupant's health and safety in serious jeopardy.

The tenant's roommate, KC, acknowledged receiving a lump on her forehead during the altercation with the tenant. Witness AS also confirmed seeing a large lump on KC's forehead on January 31, 2023. The landlord also provided photographs of the lump on KC's forehead.

Although KC pointed out that she did not given consent for someone else to provide the photographs to the landlord, I have admitted and considered the photographic evidence as permitted under section 75 of the Act, which provides as follows:

**75** The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a)necessary and appropriate, and

(b)relevant to the dispute resolution proceeding.

Upon review of the photographs, I note that it is a very large and significant lump that likely resulted in significant pain and required significant force to cause it.

In listening to KC testify, I noted that she tried to attribute the lump to being caused by one of three things, but claiming she was uncertain as to which of the three things actual caused the lump: being struck in the head by the tenant's hand; hitting her head on a fan during the altercation; or striking her head on the floor when she fell. However, considering KC still resides with the tenant and acknowledged she has an interest in seeing the tenant's tenancy continue since she does not have any other living accommodation, I also am cognizant that KC may be motivated to downplay or minimize the tenant's culpability for fear of losing her housing and/or repercussion by the tenant.

I heard from witness NR that he heard KC calling for help and sobbing. The sounds of KC's call for help and crying were such that they elicited an immediate response of NR to call 9-1-1 rather than NR go to the rental unit to see if he could lend assistance. KC acknowledged she did likely call for help and that she was crying. To me, it does not make sense that KC would call out for help loud enough for a neighbour to hear if in fact she was not a victim of the tenant's violence. In other words, if KC had tripped and fell



and hit her head, and her roommate was standing next to her, there is no reason for KC to loudly call out for help. I am of the view that calling out for help while her roommate was near her is more indicative that KC needed help because the tenant's actions were responsible for the injury and/or she feared the tenant.

Also of consideration is AS's testimony that when she saw KC outside of the building on the day of the incident, KC told AS that the tenant had hit her. I find such a statement is consistent with my finding above.

KC described how the incident occurred very fast, within 10 seconds, and after what was intended to be an oral discussion concerning rent.

In light of the above, I find it more likely than not, that the tenant physically assaulted KC with such force and without warning that it caused significant physical injury to KC.

I note that during her testimony KC stated this was an incident between roommates. The tenant's Advocate also pointed to that argument in submitting that this one incident, between roommates, is not sufficient to end the tenancy; however, I reject those arguments for the following reasons.

Section 28 of the Act entitles every tenant to the right to quiet enjoyment, which includes freedom from unreasonable disturbance or significant interference with the lawful use of the property. Further, section 28 places a burden upon landlords to protect the quiet enjoyment of all of its tenants. Accordingly, where one tenant caused or is likely to cause loss of quiet enjoyment to other tenants, the landlord is expected to take sufficient action against the offending tenant, which may include ending the tenancy under section 47 or 56 of the Act. Sections 47 and 56 of the Act expands the reason for ending a tenancy to include unreasonable disturbance, significant interference, or serious jeopardy to health and safety to include "occupants" of the property or the landlord, and not just other tenants.

The assault of January 31, 2023 was as a result of KC wanting to have a discussion with the tenant and her attempt to stop the tenant from taking money from her purse. The tenant's reaction was physically violent and quick which causes me great concern should another occupant of the building or the landlord seek to speak to the tenant or do something that interferes with the tenant's intentions. I find it unreasonable to expect the other occupants of the building, or the landlord, to be expected to avoid their ordinary and lawful right to use the property for its intended purpose for fear of the tenant's physically violent reaction.

When the tenant was asked to describe what transpired on the day in question, the tenant made no admission or acknowledgement that there was any altercation between him and KC. Rather, he merely desired the disturbance as being “pushing furniture around”. This clearly shows the tenant lacks insight and without insight I am extremely concerned that the tenant is unaware of his own actions or the consequences from his actions that includes physical harm to others. Accordingly, I am of the view that the risk to other occupants, or the landlord, is too great to dismiss this application.

For all of the reasons above, I find I am satisfied that the physical assault of January 31, 2023 is so serious and cause for concern for the health and safety of other occupants of the building, or the landlord, it is unreasonable to wait for a One Month Notice to take effect. Therefore, I grant the landlord’s request for an order to end the tenancy early.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

The landlord was successful with this Application and I award the landlord recovery of the filing fee. The landlord is authorized to deduct \$100.00 from the tenant’s security deposit to recover this award.

### Conclusion

The landlord’s application for an order to end the tenancy and obtain an Order of Possession under section 56 of the Act is granted.

The tenancy shall end two (2) days after the Order of Possession is served upon the tenant and the tenant is required to vacate the rental unit at that time.

The landlord is authorized to deduct \$100.00 from the tenant’s security deposit to recover the filing fee paid for this Application from the tenant.

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: March 15, 2023

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Residential Tenancy Branch