



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      ET FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution to end the tenancy early and obtain an Order of Possession, and to recover the filing fee from the Tenants.

All parties appeared for the hearing and provided affirmed testimony.

The Landlords stated they sent their Notice of Dispute Resolution Proceeding and evidence package to the Tenant by registered mail on March 1, 2023. Mail tracking information was provided at the hearing. The Tenants deny receiving this package. However, proof of mailing supports that it was sent to the Tenants on March 1, 2023. Pursuant to section 90 of the Act, I find the Tenant is deemed to have received this package 5 days after it was mailed, regardless of whether or not they picked up the mail package.

The Landlords stated that they sent a second package to the Tenants, containing some additional evidence, including proof of service, and some text messages. The Tenant acknowledged getting this package. I find this package was sufficiently served.

The Tenant stated that he served his evidence package to the Landlords by leaving a copy of the evidence at the Landlord's front door on March 10, 2023. The Landlords deny getting this package. The Tenant pointed to a proof of service document they uploaded to support service of this package by a third party. However, after reviewing this document, I note it states that this third party served documents on February 9, 2023. These dates are internally inconsistent and I afford the proof of service document little weight. I find the Tenant has failed to demonstrate that he sufficiently served his evidence package, and I find it is not admissible.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make oral submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Are the Landlords entitled to end the tenancy early and obtain an Order of Possession?

### Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The Landlords testified that the Tenant has a history of being loud, disruptive, and aggressive and his behaviour is significantly impacting the Tenants who reside below this rental unit, and neighbours. The Landlords focused mainly on the incident from February 22, 2023, where they stated they went to the rental unit to fix a water leak, and ended up in a verbal altercation with the Tenant and his partner, who were home at the time. The Landlords stated that the Tenant's partner picked up a hunting bow, which was on the kitchen table, and started waving it at the Landlords, and a few minutes later, the Tenant's partner picked up a knife from the kitchen and started waving it around. The Landlords stated that they filed a police report and the file number was provided.

The Landlords stated that the Tenant downstairs has been suffering, due to loud music and noise, for some time now, and it is not fair. The Landlords did not present any of their other evidence or any other issues, and only spoke generally to their evidence package.

The Tenant denied that he ever threatened the Landlords when they attended the rental unit on February 22, 2023. The Tenant stated that, on that day, the Landlords showed up, and started banging on the door, without notice, and they became aggressive, and

demanded entry. The Tenant stated that his partner was not fully clothed at the time, and as a result, they did not want to open the door, which angered the Landlords. The Tenant stated that they asked the Landlords to leave that day, but they deny that any knife or bow was pulled out. The Tenant stated that they are not big partiers, and only have loud music on occasion. The Tenant acknowledged one incident where he turned up the stereo in retaliation to getting complaints for doing simple tasks such as watching a movie.

The Tenant denies doing drugs and drinking which the Landlords are asserting.

The Landlords submitted a written explanation of the history between the parties, including previous dispute resolutions. The Landlords pointed out that the Tenant is still significantly interfering with the lower Tenant by blasting his TV and music. The Landlords stated that the only difference now is that the Tenant turns his music off by 11pm, although the disturbances during the day still continue.

### Analysis

An early end of tenancy is an expedited and unusual remedy under the Act and is only available to the landlord when the circumstances of a tenancy are such that it is unreasonable or unfair to a landlord or other residents to wait for a notice to end tenancy to take effect, such as a notice given under Section 47 of the Act for cause. Therefore, in this case the Landlord bears a strict burden to prove with sufficient evidence that the tenancy should end early Section 56 of the Act.

An application for an early end of tenancy under section 56 of the Act is reserved for situations where a Tenant poses an immediate and severe risk to the rental property, other occupants, or the Landlord. An application for an early end of tenancy is such that a Landlord does not have to follow the due process of ending a tenancy by issuing a notice to end tenancy which gives the Tenant the right to dispute the Notice by applying for dispute resolution.

Under section 56 of the Act, the director may end a tenancy and issue an order of possession only if satisfied, there is sufficient cause; and, 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 to take effect.

I have carefully considered the presented evidence and the testimony of both parties and I make the following findings in this dispute. It is clear based on the testimony from

both parties that the relationship between the Tenants and the Landlords has degraded significantly. Although there have been several issues in the past, including other hearings and notices to end tenancy, the Landlords largely focused their testimony and evidence at this hearing on the incident from February 22, 2023.

The parties have provided highly conflicting versions of events with respect to what occurred on February 22, 2023. The Landlords provide a version of events which shows the Tenant and his partner threatened them with a bow and a knife. However, this was directly refuted by the Tenant and his partner, and they assert the Landlords were the ones who showed up, and were aggressively trying to gain access to the rental unit.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find the Landlords have failed to sufficiently corroborate their allegations regarding the incident on February 23, 2023.

Further, I note there may be some noise disturbances occurring. More specifically, that the Tenants have, on occasion, used their stereo and/or TV in a manner which negatively impacts the Tenants below. Although this may form part of a basis for a 1 Month Notice to End Tenancy for Cause, I note that in order to be successful in this application, the Landlord must not only demonstrate that there is cause to end the tenancy, but they must also demonstrate that it is not reasonable for them to wait for a 1 Month Notice to take effect. I note the parties have an upcoming hearing for the 1 Month Notice that has been issued. Regardless, although I am satisfied there is some noise disturbance occurring, I am not satisfied that it would be unreasonable to wait for a 1 Month Notice to take effect.

I find there is insufficient evidence to substantiate that there is cause to end the tenancy in an expedited manner. As a result, I am unable to end this tenancy early, without further evidence from the Landlords.

Given the Landlords were not successful in this hearing, I decline to award them the recovery of the cost of the filing fee she paid to make this application.

### Conclusion

The Landlords have not met the burden to prove the tenancy should end early. Therefore, the Landlords' Application is dismissed without leave to re-apply and the tenancy will continue until such time 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: March 21, 2023

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Residential Tenancy Branch