



# 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
- for reimbursement of the filing fee pursuant to section 72 of the Act

The landlord attended the hearing represented by JK and IS. The tenant did not appear. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The hearing was conducted by conference call. The parties were reminded not to record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that they provided the tenants with their dispute notice and materials on February 11, 2023 by delivering them to the tenants in person. Both JK and IS were present for service. I find that the tenants are deemed served with the landlords' package for the dispute pursuant to 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 on August 14, 2019. Rent is \$1,000.00 per month due on the first of the month. The landlord holds a security deposit of \$500.00. The tenant still occupies the rental unit.

The landlord testified that the tenant LS is the only individual on the tenancy agreement and the only individual allowed to occupy the rental unit. Another individual appears to be living there on an intermittent basis. The other individual is disruptive and tenant LS had called the police regarding the other occupant.

The landlord further testified that the tenant is smoking in the rental unit contrary to the tenancy agreement. There is damage to the walls of the rental unit because of the tenant extinguishing her cigarettes on the walls. The landlord alleged that she also has extinguished cigarettes in clothing, which subsequently smouldered and set off the fire alarm. The landlord lives upstairs with her disabled husband and should a fire occur he would have difficulty exiting the home.

The tenant has also called the police complaining of theft as well as fights between the tenant and the other occupant of the rental unit. The landlord alleged that the tenant is using drugs. She stated she came to this conclusion because the tenant would make a phone call, and a short time later a car would arrive in the driveway, stay for a short time and leave.

### Analysis

RTB Rules of Procedure 6.6 states, "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, when the landlord is applying to end the tenancy on an expedited basis, section 56(2) of the Act lists several grounds under which the tenancy can be ended early. The landlord has the onus of proving one or more of these grounds exist.

In this case the landlord did not specifically state which ground she wished to rely on to end the tenancy. I have therefore considered all the listed grounds in section 56(2) and find that the landlord has established that the landlord's property is significant risk due to the careless disposal of smoking materials by the tenant. However, I find that based on section 56(2)(b) that the landlord has not established that it would be unreasonable or unfair to wait for a notice to end tenancy to take effect. RTB Policy Guideline 51 states in part:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence.

The requirement for supporting evidence includes evidence to establish that it would be unreasonable or unfair for the landlord to wait for a notice to end tenancy to take effect.

I find that the landlord has not established that the tenant's actions rise to the extreme level contemplated by the Act that would justify ending the tenancy early. I find that the landlord has not established that it would be unreasonable or unfair to require the landlord to wait for a notice to end tenancy to take effect. The landlord can serve the tenant with a notice to end the tenancy.

The landlord's application is therefore dismissed without leave to reapply. As the landlord was unsuccessful in their application, they are not entitled to recover the filing fee for the application.

### 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: May 28, 2023

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Residential Tenancy Branch