



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET

### Introduction

This hearing dealt with the landlord's application pursuant to section 56 of the *Residential Tenancy Act* (the *Act*) for an early end to this tenancy and an Order of Possession. The tenant did not attend this hearing, although I waited until 11:48 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord entered into written evidence copies of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). He gave sworn testimony that he handed the tenant both of these notices at 4:30 p.m. on October 1, 2012, witnessed by Tenant HYW who participated in this hearing. The landlord testified that he handed the tenant a copy of his dispute resolution hearing package seeking an early end to this tenancy on October 9, 2012. I am satisfied that the landlord served the above documents in accordance with the *Act*.

### Issues(s) to be Decided

Should this tenancy end on the basis of an early end to tenancy? Should the landlord be issued an Order of Possession?

### Background and Evidence

The landlord testified that he believed that this tenancy commenced on or about August 1 or September 1, 2011. Monthly rent for this periodic tenancy for one room in the lower level of the landlord's rental property is set at \$530.00, payable in advance on the first of each month. The landlord and his son live in the upstairs portion of this building, but do not share kitchen or bathroom facilities with the tenant. The tenant has one of three basement rooms. The other two rooms in the basement are occupied by the two witnesses (the other tenants) who are exchange students from another land. The landlord continues to hold the tenant's \$265.00 security deposit paid when she moved into this rental property. Laundry facilities in the rental property are shared between the occupants.

The landlord's 1 Month Notice identified September 30, 2012, as the effective date of that Notice. I advised the landlord that he could not seek an eviction of a tenant on a date prior to when he issued that Notice. The landlord said that the tenant has still not paid her October 2012 rent, the reason for his issuance of the 10 Day Notice.

The landlord's application to obtain an early end to this tenancy included but was not limited to:

- the landlord's claim that the tenant has been late in paying her rent and has repeatedly yelled at him and his son, and the other two tenants in this building;
- the tenant has threatened to kick his door down if he did not speak with her;
- the tenant has entered the other tenants' rooms in the basement and taken money and a laptop computer from them (reported to the police);
- the tenant has been abusive and called him at 2:30 a.m. and 3:00 a.m.; and
- the landlord's son and the other tenants in the building are scared of the tenant.

The landlord had not planned to call witnesses for this hearing. However, during the hearing he decided to call his 17-year old son and the other tenants as witnesses. The landlord's son testified that the tenant swears and screams frequently and has told him that he cannot go downstairs where he needs to use the shared laundry in this property. He testified that the tenant has never made direct threats against him. Although I heard sworn testimony from both of the other tenants, their ability to effectively communicate in the English language made it difficult to obtain information that was of real benefit to my consideration of the landlord's application. I was able to confirm that they believe that the tenant stole things from their rooms, which were previously unlocked and that the police were called to investigate their losses. While the other tenants said that they were scared of the tenant, they testified that the tenant has never threatened them.

### Analysis

Section 56 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 for a landlord's notice for cause. In order to end a tenancy early and issue an Order of Possession under section 56, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*

- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that 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;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, **and***

*it would be unreasonable, or unfair to the landlord, the tenant 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.*

Based on the landlord's undisputed evidence and that of his witnesses, I find that the landlord's application may have demonstrated that the tenant has significantly interfered with or unreasonably disturbed the landlord and the other tenants in this property. However, as noted above, section 56 of the *Act* requires that the landlord must also demonstrate that it would be unreasonable or unfair to the landlord or the other occupants of the property to wait for a notice to end tenancy for cause to take effect. I find that the landlord has not demonstrated to the extent required that it would be unreasonable or unfair to allow this tenancy to continue until the more standard methods to end a tenancy are taken. The landlord has provided limited details regarding the incidents of theft reported to the police and has not established that charges are pending. There is no clear evidence of threats issued by the tenant which would require the tenancy to end early. While the landlord may be entitled to obtain an end to this tenancy on the basis of a 1 Month Notice to End Tenancy for cause, no valid notice of this type appears to have been issued to the tenant. The landlord has not submitted an application to end tenancy for unpaid rent based on his issuance of the 10 Day Notice. An early end to tenancy cannot be obtained for non-payment of rent.

As I am not satisfied that the landlord has demonstrated that it would be unfair or unreasonable to await a notice to end tenancy for cause to take effect, I dismiss the landlord's application for an early end to this tenancy.

### Conclusion

I dismiss the landlord's application with the effect that this tenancy continues.

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: October 20, 2012

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Residential Tenancy Branch