



# 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 an application by the landlord to end the tenancy early and obtain an order of possession. The hearing first convened on November 28, 2012. On that date, the landlord and the tenant both appeared in the teleconference hearing.

The tenant requested an adjournment because he had not received notice of the hearing until the evening of Sunday, November 25, 2012 when he discovered the notice taped to his door. The tenant stated that he needed more time to prepare his response to the landlord's application. The landlord stated that she personally served the tenant with the hearing package at his door at 8:00 a.m. on Friday, November 23, 2012. A witness for the landlord stated that he was present when the landlord served the tenant. The tenant responded that he was at work at 8:00 a.m. on that date. A witness for the tenant stated that the tenant was present at her home doing contacting work before 8:00 a.m. on that date. I determined that in order to ensure fairness and allow the tenant an opportunity to prepare his response, an adjournment was appropriate.

The tenant also requested that the hearing be convened as a face to face hearing rather than teleconference, as he wanted to face his accuser. I denied the request, as I did not find the tenant's reason for requesting a face to face hearing was sufficient. I informed both parties that I was confident in my ability to assess credibility of evidence by teleconference.

The hearing reconvened on December 5, 2012. The landlord and the tenant both participated in the teleconference hearing on that date. The tenant had received all of the landlord's documentary evidence but not the photographic evidence. The evidence the tenant received included a letter from the landlord's doctor. That letter was not included in the evidence submitted to the Residential Tenancy Branch. I did not admit or consider the photographic evidence. I heard and considered the landlord's testimony and the tenant's response regarding the doctor's letter, and determined that it would not be necessary for the landlord to submit the doctor's letter as evidence (as discussed below).

Issue(s) to be Decided

Should the tenancy be ended early?

Background and Evidence

The tenancy began in September 2012. The rental unit is a separate suite in the lower portion of the landlord's house. The landlord and her family reside above the rental unit.

*Landlord's Evidence*

The landlord seeks to end the tenancy because of the tenant's behaviour. The tenant was not supposed to smoke in the rental unit but he does so all the time and it is having a negative impact on the health of the landlord and her family because they live above the rental unit. The landlord submitted a letter from her doctor to verify this fact. The tenant threatened to burn the house down, he disconnected the smoke alarm, and he offered smokes to the landlord's little kids. The tenant verbally threatened the landlord and her children, and he threw live cigarette butts around the landlord's house. Every night the tenant shuts off the electricity for the whole house, as the electrical breaker is located inside his suite. The landlord fears for her safety and the safety of her children.

*Tenant's Response*

The tenant denied smoking in the rental unit, offering cigarettes to the landlord's children, throwing live cigarette butts in the house and threatening the landlord and her family.

The tenant acknowledged removing the smoke detector for one night. He stated that the smoke detector would not stop beeping, and he took it down because he could not sleep. He arranged to have it reconnected the next day, but the landlord happened to come in to inspect the smoke detector before the tenant could have it reconnected.

Analysis

I find that the landlord has not provided sufficient evidence to support her application for an early end of tenancy.

I found that even if I had a copy of the landlord's doctor's letter, the letter would not have had a material impact on the landlord's claim. The doctor's letter could provide information regarding the health of the landlord and her family, but it would not provide

sufficient evidence to prove that the tenant or a guest of the tenant was smoking in the rental unit contrary to the tenancy agreement.

Under section 56 of the Act, the tenancy may only be ended early if the landlord provides sufficient evidence that the tenant has

1. significantly interfered with the landlord or another occupant of the residential property;
2. seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant;
3. put the landlord's property at significant risk;
4. engaged in illegal activity that
  - a. has damaged or is likely to damage the landlord's property,
  - b. has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or
  - c. has jeopardized a lawful right of another occupant or the landlord; or
5. caused extraordinary damage to the residential property

AND it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end tenancy for cause to take effect.

In this case, I find that the landlord has only provided allegations of the tenant's misconduct, most of which were not supported by reliable evidence and which were disputed by the tenant. The landlord has not provided sufficient, clear evidence to establish adequate cause to end the tenancy under section 56.

### Conclusion

The landlord's application is dismissed.

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: December 7, 2012.

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Residential Tenancy Branch