



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

On May 14, 2020, the Landlords made an Application for Dispute Resolution seeking an early end to this tenancy and an Order of Possession pursuant to Section 56 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

P.L. attended the hearing as an agent for the Landlord and both Tenants attended the hearing as well. All parties provided a solemn affirmation.

P.L. advised that the Tenants were served the Notice of Hearing and evidence package by email on or around May 14, 2020 and the Tenants confirmed that they received this package on May 15, 2020; however, they advised that they could not open the video attachment. P.L. advised that he did not check to see if the Tenants could view this digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure. P.L. also advised that he served late evidence by email to the Tenants on June 2, 2020. The Tenants confirmed that they had read this late evidence and were prepared to respond to it. Based on the undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence package on May 15, 2020. As the Tenants were prepared to respond to the Landlords’ late evidence, I have accepted this and will consider it when rendering this Decision; however, the video evidence has been excluded and will not be considered.

The Tenants advised that they served their evidence to the Landlords by email on May 22, 2020 and P.L. confirmed that they had received this evidence. Based on this undisputed testimony, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; 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 an early end to this tenancy and an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2005, that rent was currently established at \$1,026.00 per month, and that it was due on the first day of each month. A security deposit of \$425.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

With respect to the Landlords' request for an Order of Possession based on an early end of tenancy, P.L. requested that the Tenants present their case first. However, he was advised that as he made the Application and the claim for an early end of tenancy, the burden of proof is on him to present justification to explain why the Landlords made this Application.

He stated that the upstairs tenants moved in on or around March 2019 and since then, there have been problems between the upstairs and downstairs tenants. He broadly described the situation and explained that he considers the manner with which the downstairs Tenants behave is a threat to the health of the upstairs tenants. He stated that the downstairs Tenants have displayed the middle finger and have used profanity, that the downstairs Tenants have repeatedly parked in a manner that has been an "extreme inconvenience" to the upstairs tenants, and that Tenant Ed.C. had intentionally sneezed within close proximity to the upstairs tenants. He advised that the continued adverse behaviours of the Tenants have exacerbated the deteriorating health of the upstairs tenants. He advised that he has issued a warning letter to the Tenants on July 31, 2019 and on February 8, 2020.

He clarified that what he considered to be threatening behaviour was the use of foul language by the Tenants and the use of the middle finger, which was captured on camera a few times. He stated that the police were called multiple times, but they advised that the Landlords should be dealing with these concerns.

P.L. was unable to point me directly to the evidence that he submitted with respect to his position on the endangerment of the upstairs tenants' health, but he said the evidence was submitted. He advised that there were multiple letters from doctors which confirmed that the upstairs tenants' health was deteriorating due to harassment from the downstairs Tenants.

Regarding the sneezing incident, P.L. advised that the upstairs tenants reported that Ed.C. intentionally sneezed within close proximity to them, and he stated that he should have “turned around out of courtesy.” He stated that the police were called on April 14, 2020 about this issue, but they advised the Landlords that this was an issue that the Landlords must deal with. On May 26, 2020, he stated that Ed.C. sneezed within close proximity to the upstairs tenants again and the police were called. However, he stated that a “message was left and [he is] not sure what happened.”

Tenant El.C. advised that their first negative interaction with the upstairs tenants occurred on March 10, 2019. With respect to the issue of threats, she stated that the use of their native language is likely being misinterpreted by the upstairs tenants as hostile. While she confirmed that they sometimes have family arguments, they have never had any face to face interactions with the upstairs tenants. She confirmed that Ed.C. had been captured on security camera footage multiple times showing the middle finger; however, it is their belief that one of these pictures has been digitally altered by the Landlords.

Regarding the parking issue, they have always tried to accommodate the upstairs tenants when they were advised of a problem, but she stated that their truck is quite big. Furthermore, she stated that there is nothing in the tenancy agreement which specifically addresses parking.

With respect to the sneezing issue, Ed.C. advised that he was getting groceries on April 14, 2020 and the upstairs tenants had passed close to him in the driveway. He stated that he was facing his car and he never sneezed near them, but he said “excuse me” because they passed near him. He stated that he was never contacted by the police.

El.C. advised that she would be considered a vulnerable person if she contracts COVID-19, so they practice appropriate social distancing protocols. As well, she stated that she sent a message to the Landlords in June 5, 2019 to request that all parties meet to discuss their differences and try to move forward peacefully; however, the Landlords simply ignored this message.

P.L. advised that the reason they did not respond to this request was because they felt that it was not a good idea to put the parties together in the same space. However, he then stated that they had verbally warned both sets of tenants of issues and that he advised both parties to talk to each other to smooth things over. He stated that the first warning letter he issued to the Tenants helped for about a week, but then the issues became worse after that. As well, he advised that the Landlords did not take any action sooner to address these problems because they were giving the parties time to sort out their issues.

## Analysis

Section 56 of the *Act* establishes the grounds for the Landlords to make an Application requesting an early end to a tenancy and the issuance of an Order of Possession. In order to end a tenancy early and issue an Order of Possession under Section 56, I need to be satisfied that the Tenants have 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.*

When reviewing the totality of the evidence before me, I understand the concerns of the Landlords; however, 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.

With respect to P.L.'s submissions regarding what he considered to be threatening behaviour, while inappropriate, I do not find that he has provided sufficient evidence to support that the foul language used was in any way a threat, nor has he submitted sufficient evidence to establish how displaying the middle finger would support the high threshold for justifying an early end of tenancy. Furthermore, while he submits that the doctors' notes confirm that the alleged "harassment" that the upstairs tenants endured contributed to their deteriorating health, I find it important to note that the doctors were not likely present to observe firsthand, and confirm, any of the incidents of "harassment." As such, apart from being advised by the upstairs tenants that this was the source of their declining health, I find that I can give little weight to the doctors' diagnoses to support that this was the specifically the cause of the upstairs tenants' health issues. While the actions and behaviours of the Tenants may support the formation of the basis to attempt to end the tenancy using a One Month Notice to End Tenancy for Cause, I do not find that the Landlords have submitted compelling evidence

that these actions or behaviours constitute a threat that satisfies the elevated threshold of an early end of tenancy Application.

Regarding the parking issue, while the upstairs tenants and downstairs Tenants may have a disagreement over parking, I do not find that an “extreme inconvenience” in any way justifies the high threshold of an early end of tenancy Application.

Finally, regarding the sneezing issue, while I acknowledge that the current pandemic climate has heightened everyone’s awareness and sensitivity around the spread of germs and disease, I find it important to note that there is conflicting evidence over whether Ed.C. even sneezed in the first place. Furthermore, there is not sufficient evidence that if he did sneeze, that this was done intentionally. While P.L. claims that the police were called over this incident, as he stated that they told him to deal with this issue himself, I find it more likely than not that the police could not make any conclusive findings on whether this event occurred or not. As the burden of proof lies on the Landlords to prove that the Tenants acted in a manner to warrant an early end to the tenancy, I find that they have submitted insufficient evidence to justify an early end of tenancy Application.

It is clear to me that the downstairs Tenants and upstairs tenants are dissatisfied with each other, and it is not beyond the realm of possibilities that they have both engaged in heated, unpleasant interactions that have escalated tensions between them. While I am not entirely convinced that the downstairs Tenants are solely to blame for the dysfunction within this property, their actions and behaviours are more likely than not also a contributing and aggravating factor to the dysfunctional relationship between the parties. As a result, I strongly caution all of the tenants that they are on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize their tenancies.

Again, I must stress that it is incumbent on both parties to work together through this pandemic crisis, and I urge the parties to make sensible decisions about their actions that take into consideration the devastating impact those decisions may have on the lives of not only themselves, but others as well. While it is not proven that Ed.C. sneezed, intentionally or unintentionally, in close proximity to the upstairs tenants, or if the upstairs tenants fabricated this allegation or took a sneezing incident and blew it out of proportion, the tenants of the property are reminded to be cognizant of the heightened implications, interpretations, and/or consequences of their actions, and how they may be construed in these unprecedented times.

As the onus is on the Landlords to prove their claims, under the circumstances described, I find that they have provided insufficient evidence to warrant ending this tenancy early based on this type of Application. Consequently, I find that the Landlords are not entitled to an Order of Possession and I dismiss this Application in its entirety.

As the Landlords were not successful in this claim, I find that they are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Landlords' Application without leave to reapply.

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: June 7, 2020

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Residential Tenancy Branch