



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VISIO DEVELOPMENTS LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an early end to tenancy and an Order of Possession, pursuant to section 56; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the property manager for the landlord company owner named in this application and that she had permission to speak on its behalf at this hearing. This hearing lasted approximately 42 minutes.

The landlord's witness was excluded from the outset of the hearing and the landlord did not recall the witness. The landlord stated that she did not need to call her witness, she was only there to say she recorded videos for the landlord, it was only if I wanted to hear from the witness. I informed the landlord that it was up to her to contact her witness to call back in and that it was the landlord's case to present, so she could recall her witness if she wanted to do so. The landlord did not recall her witness, despite being asked multiple times if she had any other evidence to present for this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

### Issues to be Decided

Is the landlord entitled to end this tenancy early and to obtain an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

Both parties agreed to the following facts. Monthly rent in the amount of \$809.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The tenant claimed that her tenancy began on February 1, 2016, while the landlord stated that it was on July 9, 2018. The tenant stated that she paid a pet damage deposit of around \$200.00, but the landlord claimed that she did not know.

The landlord testified regarding the following facts. The tenant is engaged in drug activities at the rental building. The landlord submitted copies of three videos, claiming that the tenant was buying and selling drugs at the rental building. In the third video, taken on June 10, 2020 at 10:48 p.m., the tenant has a small bag with a white substance which is “clearly” being traded for money. The bag is different than a prescription bag or a box. The landlord provided the videos to the police and has a file number, but the landlord did not follow up with the police and was told to evict the tenant at the Residential Tenancy Branch. The tenant is engaging in illegal activity, the landlord is not aware of any police reports or convictions against the tenant, and the landlord is concerned for the safety of children at the rental building.

The tenant testified regarding the following facts. The landlord is trying to renovate the tenant to obtain a higher rent, since the tenant and another resident are the only two people left, paying a lower amount of rent than the other newer residents. The tenant is not dealing drugs at the rental property. There were no police arrests or convictions against the tenant. She spoke to the police at the rental building and they told her there was not enough proof for a conviction and nothing was being done against her. The tenant has health issues and has medications delivered to her by her pharmacist, the food bank brings her food, her friends help her out, and her son’s friend came over to borrow money from her. The intercom at the rental building does not work so the tenant has to go to the front door to meet people. She could not see the landlord’s videos properly and she has memory issues from an injury she suffered. The white substance

may be small Aspirin that she got. She submitted a letter from her doctor regarding her health issues and a letter from her pharmacist regarding weekly deliveries of medications made to the tenant.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Section 56 of the *Act* requires the landlord to show, on a balance of probabilities, that the tenancy must end earlier than the thirty days indicated on a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), due to the reasons identified in section 56(2)(a) of the *Act* **AND** that it would be unreasonable or unfair for the landlord or other occupants to wait for a 1 Month Notice to take effect, as per section 56(2)(b).

To satisfy section 56(2)(a) of the *Act*, the landlord must show, on a balance of probabilities, that:

- (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:*
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;*
  - (iii) put the landlord's property at significant risk;*
  - (iv) engaged in illegal activity that*
    - (A) has caused or is likely to cause damage to the landlord's property,*
    - (B) 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, or*
    - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

On a balance of probabilities and for the reasons stated below, I find that the landlord's application fails the second part of the test under section 56(2)(b) of the *Act*. I find that the landlord did not provide sufficient evidence that it would be "unreasonable" or "unfair" to wait for a 1 Month Notice to be determined.

The landlord did not testify about which one of the above parts of section 56(a) of the *Act*, she was applying under.

The landlord failed to show the urgency of this situation to demonstrate that it would be “unreasonable” or “unfair” to wait for a 1 Month Notice to be determined.

The landlord suspects that the tenant is engaging in illegal activity that threatens the safety of residents in the rental building, but she did not follow up with the police regarding the three videos she submitted. Both parties agreed that the police did not arrest or charge the tenant with any crimes. The landlord did not produce any police reports or police officers to testify at this hearing.

The landlord’s third video is over two months old at the time of this hearing on August 11, 2020, as it was taken on June 10, 2020. The landlord did not file this application until July 14, 2020, more than one month after the third video that the landlord claims “clearly” shows the tenant is dealing drugs.

Accordingly, I dismiss the landlord’s application for an early end to this tenancy and an Order of Possession, without leave to reapply.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord’s entire application is dismissed 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: August 11, 2020

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Residential Tenancy Branch