



# 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 the *Residential Tenancy Act* (the "**Act**") for an early end to the tenancy and an order of possession pursuant to section 56.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:48 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord's owner ("**AK**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that AK and I were the only ones who had called into this teleconference.

AK testified he served that the tenants with the notice of dispute resolution form by posting it on the door of the rental unit on February 5, 2021. He submitted proof of service forms which were witnessed to corroborate this. I find that the party was deemed served with the notice of dispute resolution on February 8, 2021, three days after AK posted it, in accordance with sections 89 and 90 of the Act.

In support of its application, the landlord uploaded two video files to the Residential Tenancy Branch (the "**RTB**") evidence web portal. It provided no other documentary evidence in support of its application. AK testified that he texted these two videos to the tenants after he served them with the notice of dispute resolution form. He also testified that he showed the videos to the tenant the day after the events they captured occurred (sometime in early January 2021).

The Act does not allow service of documents by text message. The RTB Rules of Procedure contain extensive directions about the service of digital evidence (Rule 3.10). In particular, Rule 3.10.5, in part, states:

#### **3.10.5 Confirmation of access to digital evidence**

[...]

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

The landlord did not do this. The tenants did not attend the hearing, so I could not confirm that they received and were able to view the video files submitted by the landlord. As such, I find that the landlord failed to serve the two video files in accordance with the Act or the Rules of Procedure. As such, I exclude these videos from the documentary record and will not consider them when making my decision.

### **Issue to be Decided**

Is the landlord entitled to end the tenancy early and obtain an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of AK, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a tenancy agreement starting September 1, 2020. Monthly rent is \$2,000 and is payable on the first of each month. The tenants did not pay any security or pet damage deposit to the landlord at the start of the tenancy.

AK testified that:

- 1) He has received frequent phone calls from neighbors to the rental unit telling him that the tenants frequently meet with drug dealers outside the gate at the boundary of the residential property. He testified that they told him that they see needles by the garbage cans in this area as well.
- 2) The tenants have numerous guests stay with them in the rental unit and they refused to identify these guests to him.
- 3) In early January 2021, one of the tenants' guests chased someone out of the rental unit and that that person got into a car and drove the car at the tenants' guest and crashed into the gate (the tenants' guest was not hit).
- 4) One of the tenants' guests has a warrant for his arrest and that one of the tenants (confidentially) told him that someone told him that this guest was a murderer.
- 5) He called the police to attend the rental unit and that, when the police arrived, one of the tenants distracted the police while the guest slipped out the back door of the rental unit. AK testified that this event was caught on security camera footage.
- 6) The landlord operates a business in the lot adjacent to the residential property and stores its company vehicles on that lot. He testified that someone recently broke into the vehicles and stole a large amount of equipment and electronics out of the vehicle. He suspects that it was one of the tenants' guests, but he cannot prove it as, prior to the break-in, the power lines leading to the security cameras were cut. He testified that he notified the police and his insurer about this

incident. AK stated that he now stores his work vehicles in another location, for fear of them being broken into again.

- 7) The landlord is a family-owned business, and due to the actions of the tenants' guests, his wife no longer allows him to bring his children to work.
- 8) The tenants have not paid the full amount of rent owed since November 2020. He testified that he suspects the tenants are renting one of the bedrooms in the rental unit out to their guests, and not passing these funds onto him.

## **Analysis**

Early Termination of Tenancy applications are governed by section 56(2) of the Act, which reads:

- (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
  - (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;
    - (v) caused extraordinary damage to the residential property, and
  - (b) it would be unreasonable, or unfair to the landlord 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.

Rule of Procedure 6.6 sets out the standard which I am apply when assessing whether to grant the relief sought in an application. It states:

### **6.6 The standard of proof and onus of proof**

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 most circumstances this is the person making the application.

As such, the landlord must satisfy me, on a balance of probabilities, that the tenant's conduct meets the requirements set out in section 56(2)(a) and (b) of the Act.

Policy Guideline 51 provides additional guidance on applications brought pursuant to section 56 of the Act. It states:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

[emphasis added]

The landlord provided no documentary evidence to support its allegations (except for the two video files, which I have excluded from evidence, for reasons stated above). I would have expected photographs of damage to the residential property and needles on the ground, copies of police and insurance reports relating to the break-in and car crash as well as sworn statements from the neighbours relating to the conduct of the tenants and their guests (or for the neighbours themselves to have given testimony at the hearing).

In the absence of documentary evidence supporting AK's testimony, and due to the fact that much of AK's testimony is based on second- or third-hand knowledge, I find that AK's testimony is insufficient to discharge the landlord's evidentiary burden to prove that

the tenants met the conditions set out in section 56(2) of the Act. In order to obtain an order of possession for an early end of tenancy, more than uncorroborated testimony is needed.

As such, I dismiss the landlord's application, with leave to reapply.

**Conclusion**

I dismiss the application, with leave to reapply. The tenancy shall continue.

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: February 23, 2021

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Residential Tenancy Branch