



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ET, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on May 6, 2022. The Landlord applied for an order of possession pursuant to section 56 of the *Residential Tenancy Act* (the *Act*), and to recover the filing fee pursuant to section 72 of the *Act*.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant in person on May 13, 2022, which service was witnessed by KC. A Proof of Service Notice of Expedited Hearing was submitted in support. I find the Tenant was served with and received these documents on May 13, 2022.

The Tenant did not submit documentary evidence in response to the Application.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord testified the tenancy began on October 16, 2019. Currently, rent of \$2,200.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,100.00, which the Landlord holds. A partial copy of the tenancy agreement, signed on October 16, 2019, was submitted into evidence.

The Landlord wishes to end the tenancy. The Landlord testified the Tenant rents the upper level of the rental property and that he operates a store on the lower level. However, the Landlord testified the Tenant collects junk and stores it around the property and that it does not look nice. Although the Tenant has advised that she intends to clean and sell the items to help pay for rent, it does not appear the Tenant is doing so. Photographs submitted by the Landlord depict a variety of items stored outside the rental property, including: a plate, a baby chair, a cooler, a decorative pot, a chair, storage tubs, a clothes rack, railings, a lawnmower, children's toys, concrete bricks, and furniture.

The Landlord also testified that the Tenant smokes in the rental property and that the odour goes into the store. The Landlord also testified that as of May 31, 2022, the Tenant owes \$4,400.00 in unpaid rent and \$1,344.00 in unpaid utilities.

The Tenant did not attend the hearing to dispute the Landlords' evidence.

### Analysis

Based on the documentary evidence and affirmed oral testimony, and on a balance of probabilities, I find:

Section 56 of the Act permits a landlord to end a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 of the Act. The circumstances which permit an arbitrator to make these orders are enumerated in section 56(2) of the Act, which states:

*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...*

- (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 landlords 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.*

In this case, I accept that the items being collected outside are unsightly, and that smoking in the rental unit and failing to pay rent when due is an inconvenience to the Landlord. However, I find there is insufficient evidence before me to conclude that the Tenant's behaviours *significantly* interfered with or *unreasonably* disturbed the Landlord, *seriously* jeopardized the health or safety or a lawful right or interest of the Landlord, put the Landlord's property at *significant risk*, or caused *extraordinary* damage to the residential property. There is no evidence of illegal activity before me. The actions of the Tenant simply do not meet the threshold required under the Act to support granting an order of possession on an expedited basis.

Further, I find it would not be unreasonable or unfair to the Landlord to wait for a notice to end the tenancy for cause under section 47 of the Act to take effect, or for the Landlord to issue a notice to end tenancy for unpaid rent or utilities under section 46 of the Act.

Considering the above, I find that the Landlord's application is dismissed without leave to reapply.

Conclusion

The Landlord's 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: May 31, 2022

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Residential Tenancy Branch