



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET FFL

### Introduction

This hearing dealt with the landlords' Application for Dispute Resolution, seeking remedy under the *Residential Tenancy Act* (Act) for an order to end the tenancy early and to receive an order of possession, due to health or safety issues, and to recover the cost of the filing fee.

The landlords and the tenants attended the teleconference hearing. The parties were provided the opportunity to provide affirmed testimony and were provided the opportunity to present evidence submitted in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and makes submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Although the landlords' indicated that their USB drives did not contain the same documents from the tenants, I find there are no service issues as that evidence was not considered in writing this decision. The remainder of the documentary evidence was confirmed as having been received and reviewed by both parties.

### Preliminary and Procedural Matter

The parties confirmed their email addresses and were advised that the decision would be sent to both parties by email.

### Issues to be Decided

- Are the landlords entitled to end the tenancy early and obtain an order of possession for health or safety purposes under the Act?

- If yes, are the landlords entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

The current tenancy agreement between the parties began on August 15, 2021.

The landlords confirmed that on August 8, 2022, they have a hearing scheduled to hearing the merits of a 1 Month Notice to End Tenancy for Cause (1 Month Notice) issued in March 2022. Regarding this application the landlords wrote the following in their application as the reason they filed this application:

Stress and anxiety to landlords due to toxic environment created when tenants were served with a One Month Notice to End Tenancy for Cause due to several breaches of material terms of the tenancy agreement (failed to maintain reasonable health, cleanliness and sanitary standards in rental suite) , tenants have engaged in illegal drug usage (one had a fentanyl overdose), (there have two cooking fires in the rental suite - one fairly serious and one lesser,) and (exceed number of pets allowed).

[reproduced as written]

The landlords were asked about the most serious cooking fire issue and the landlords confirmed that it occurred on the evening of December 16, 2021. The landlords then stated that the second, less serious cooking fire occurred in February 2022. The landlord were asked about the fentanyl allegation and they stated that occurred on November 14, 2021. The landlords were unable to describe any issues related to health or safety in the May 2022, the month the landlords applied for this application to end the tenancy for health and safety issues.

The parties were advised that due to a hearing already schedule on August 8, 2022 regarding a 1 Month Notice issued in March 2022, that the issues described above relating to two cooking fires and a use of fentanyl allegation were all months before the landlords submitted the application before me for an early end of tenancy for health or safety reasons, which I will address further below.

## Analysis

Based on the documentary evidence and the testimony during the hearing and on a balance of probabilities, I find the following.

Section 56 of the Act indicates a two part test as follows with the portion in bold being the second portion of the two-part test:

**56(1)** A landlord may make an application for dispute resolution to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and

(b) granting the landlord an order of possession in respect of the rental unit.

(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.**

[emphasis added]

The burden of proof is on the landlords to prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end tenancy under section 47 to take effect. As the landlords already have a hearing scheduled on August 8, 2022 related to the 1 Month Notice, I find that none of the issues raised above would meet the second-portion of the two-part test under section 56 of the Act as the most serious issues as described by the landlords (more serious cooking fire on December 16, 2022 and a fentanyl issue on November 14, 2021) were five and six months prior to this application filed on May 24, 2022, respectively.

As a result of the above, I find that the landlords have failed to meet the burden of proof in proving that the tenancy should end early, **and that it would be unreasonable and unfair to the landlord or the other occupants to wait for a notice to end tenancy under section 47 of the Act.** Consequently, **I dismiss** the landlords' application due to insufficient evidence.

This merits of the 1 Month Notice already issue will be dealt with at the hearing already scheduled for August 8, 2022.

The filing fee is not granted as this application has been dismissed.

### Conclusion

The landlords' application fails and is dismissed due to insufficient evidence. The landlords have not met the second part of the two-part test under section 56 of the Act as this application was filed 5 and 6 months, respectively, after the most serious allegations made by the landlords occurred.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties at the email addresses confirmed by the parties during the hearing.

The filing fee is not granted as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 6, 2022

---

Residential Tenancy Branch