



# 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 for Dispute Resolution (the "Application") seeking an order to end the tenancy and obtain an order of possession.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Residential Tenancy Branch Rules of Procedures (the "Rules") 10 - Expedited Hearings

If any time limit in this rule conflicts with the time limit in another rule, the time limit in this **rule applies to the expedited hearing**.

10.2 Applicant's evidence for an expedited hearing states the following:

**An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.**

On June 22, 2022, the landlord filed their Application, with that Application the landlord filed two documents. The first document is a redacted email dated May 19, 2022. The second document is a redacted email dated May 19, 2022, which is a statement from the electrical contractor. I am satisfied that this evidence was file with the Application and served upon the tenant with the Application.

On July 7, 2022, the landlord filed additional evidence, which was said to have been served on the tenant the night before the hearing, on July 6, 2022, by posting to the door. The tenant denied they received the evidence.

The landlord was given the option to adjourn this matter to have the tenant review the evidence. However, they did not want this matter adjourned.

In this case, the Rules are very clear that when applying for an expedited hearing that all evidence they intend to rely upon must be submitted with their Application. Any time this rule that conflicts with this another rule, that the time limit for this rule applies for expedited hearing., I find the landlord was not entitled to submit additional evidence after the Application was filed. Therefore, I find it appropriate to exclude the evidence filed on July 7, 2022, from the hearing.

### Issue to be Decided

Is the landlord is entitled to an order of possession to end the tenancy early and without notice, **pursuant to Section 56 of the Act.**

### Background and Evidence

The landlord writes in their application the reasons for this urgent application is about a tenant who poses an immediate and severe risk to the rental property, other occupants or the landlord and want, and immediate order of possession as follows:

Tenant's visitors have been witnesses purchasing drugs from the unit, fighting & screaming in the hallways, stairwell and common areas and urinating on the rental property. Tenant uses the Rental Unit for the sale and trafficking of illegal drugs. Tenants and their guests damage exit lights, signs and doors so that they will not close posing a security risk to the building.

[Reproduced as written]

The landlord's legal counsel agent testified that the landlords had purchased the property in January/February 2021. Counsel stated since February of this year there were break- in, the fire alarm system was broken, doors were broken to be left open, which is a significant risk to the property. Counsel stated this can be tracked to two rental units. The Counsel states that the tenant has numerous guest which they believe are related to drug trafficking and the damage.

The landlord's agent MM testified that the tenant is unruly, and that they party everyday, music is loud every day and with constant visitors they are destroying the property. MM stated that the traffic count is between 25-30 visitors a day. MM stated that the tenant is

also working with another occupant in the building who is the main drug dealer, and the tenant is a sub seller of drugs.

MM testified that the tenant has done damage to the rental unit, thrown items of their balcony and has had numerous RCMP visits. MM stated that they have 50 units and 37 that are empty, because they cannot put new occupants into the units due to the tenant's behaviour. MM testified that the tenant's boyfriend has pulled the fire alarms and they have been charged criminally.

Counsel for the landlord clarified that the tenant's boyfriend was also a tenant and was evicted last year, and the tenant was not involved in that incident; however, this year the break-ins and damages have escalated during the month of May and June 2022.

The landlord's agent TM testified that they have issued a One Month Notice for Cause; however, that matter is not scheduled to be heard until October 2022 and this delay is putting their property at significant risk.

The witness MJ testified that they live in unit 405 directly next-door to the tenant. MJ stated they have lost count of how many daily visitors come to unit 404; however, it goes on until 4am every day. MJ stated that they have seen several times that there has been stuff put into the doors.

The witness MJ testified that one incident they had with the tenant's guest was last summer, 2021, where the tenant's visitor was yelling over the balcony "raise my grandchildren right" because my grandson would not let them into the building, which significantly disturbed them.

The witness MJ testified that on July 1, 2022, the tenant was kicking in the door of their own rental unit and a piece fell off the wall and the tenant picked up that broken a piece of the wall and threw it at them cutting them on the leg. MJ stated that the police showed up and told the tenant that they would have to pay for the damage. MJ stated that they had to asked to have the tenant charged with assault; however, they are still waiting for the outcome.

The witness MJ testified that on July 7, 2022, the tenant was again kicking in the door of their own rental unit and mocking them.

The witness JM testified that is has been a constant flow of traffic coming into the rental property, not just from the tenant's apartment. They are constantly pulling the fire

alarm, damage exit signs and doors. JM stated one incident in particular, which they don't remember the specific date, but it was six months ago where the RCMP attended on 3 occasions. JM stated that as soon as they made the repair the tenant's guest pulled the fire alarm right in front of them.

JM testified that on June 4, 2022, at 2:28 pm they took a picture of the stairwell lighting on the 4<sup>th</sup> floor and at 2:30 pm it had been ripped off.

JM testified that in the past six weeks they have seen people coming and going out of the tenant's rental unit. JM stated that they have not made any notes.

The landlord's agent TM stated they did issue a One Month Notice for Cause which is scheduled to be heard in October 2022; however, the delay in the hearing date has serious ramifications of safety issues for the building and the remaining occupants.

The tenant testified that they only have one or two guest over. The tenant stated that the front door was broken because there was a vehicle incident that caused the damage and there are issues with the doors locking. The tenant stated that they have not broken any doors and denies selling drugs. The tenant stated that the witness MJ has been harassing them.

The advocate for the tenant stated that the landlord has not provided any evidence that this is an urgent matter that relates to the tenant. The advocate stated that the landlord's evidence is primarily related to unit 211 and 411 and is simply an accusation and speculation of the tenant. The advocate stated that they have been to the building and the doors do not close. The advocate stated that the evidence was submitted by the landlord is anonymous. The advocate stated that the tenant has not urinated anywhere on the property and does not know who has and has not damaged any property of the landlord. The advocate stated that although the tenant does acknowledge they did damage a door over a year ago, that there is no evidence that the tenant poses an immediate risk to the property.

### Analysis

Section 56 of the *Act* allows a landlord to request an order of possession to end the tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under Section 47 (1 Month Notice to End Tenancy for Cause) if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
  - 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, or
  - 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 rental unit or residential property;
- b) And 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 to take effect.

In this case, the landlord has issued a One Month Notice for Cause under Section 47 of the Act on February 15, 2022, with an effective vacancy date of March 31, 2022. The landlord file for an order of possession on June 2, 2022, which a hearing is to be held on October 14, 2022.

The landlord filed this Application on June 22, 2022. Section 56 of the Act is not intended to circumvent the provision of section 47 of the Act or to obtain an earlier hearing date.

While I accept that the landlord is having significant problems with tenants which must be rectified; however, I am not satisfied that the landlord has met the burden of proof due to insufficient evidence at this hearing as only incidents that occurred prior to them filing their application and within a reasonable time period are to be considered.

In this case, the landlord has filed two documents as evidence, they refer to unit 211, 404 and 411. I have not referred to the second document as it is related to an ongoing investigation; however, in that document it identifies unit 411.

The first document reads as follows:

“Again, we are fighting the issues of the drug customers of unit #211[name removed] and #404 [name removed] propping open and breaking/disabling entry doors. But that doesn’t appear to be changing until the heart of the trafficking problem is resolved”.

[Reproduced as written]

However, I have no evidence before that proves the tenant in unit 404 is in fact dealing drugs, such as dates or times of customers attending their unit or any witness that actually saw the exchange of drugs or any report or testimony from the RCMP to support this. The testimony provided at this hearing was only speculative.

I have no evidence before me that directly proves the tenant in unit 404 or their guest are propping open and breaking entry doors. I had no witness who directly saw the tenant propping the door or breaking the entry door, such as dates or times or any video surveillance showing this to be the case.

I appreciate that it may be difficult for the landlord to prove when there are multiple problem tenants within the building. However, the onus is on the landlord to provide sufficient evidence to support their allegations against the tenant subject to this hearing.

Therefore, I find the landlord has not met the first part of the test and I dismiss their application accordingly.

### Conclusion

The landlord’s application is dismissed.

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: July 12, 2022

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Residential Tenancy Branch