



# 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 scheduled to convene on an expedited basis at 9:30 a.m. on September 21, 2022 concerning an application made by the landlord for an order ending the tenancy early, as it would be unreasonable, or unfair to the landlord or other occupants to wait for a Notice to End Tenancy for Cause to take effect.

The landlord attended the hearing, but was represented at the hearing by his daughter who acted as agent for the landlord. The tenant also attended and the landlord's agent and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the hearing, the landlord's agent indicated that the tenant's name was incorrectly placed on the landlord's application, and the frontal page of this Decision reflects the amended name of the tenant.

During the course of the hearing the tenant testified that the documents served to the tenant did not include a letter from the landlord, which has been provided as evidence by the landlord for this hearing. The landlord's agent testified that she placed all of the documents in an envelope for delivery to the tenant, which included the letter. The tenant did not seem sure whether or not the letter was in the documentation, and I find that all evidence provided has been exchanged, and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that an Order of Possession should be issued without serving a notice to end the tenancy because it would be unreasonable or unfair to the landlord or other occupants to wait for a notice to end the tenancy to take effect?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on April 1, 2019 and the tenant still lives in the rental unit. Rent in the amount of \$600.00 is payable on the 1<sup>st</sup> day of each month, however the tenant has not paid any rent for the last 4 months. The landlord did not collect a security deposit or a pet damage deposit from the tenant, who is the landlord's nephew. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the landlord does not get along with the tenant, and police have been called twice.

When the tenant moved into the basement suite he was told not to go upstairs to the landlord's home, but on June 5, 2022 at 8:30 p.m. the tenant went upstairs to make a partial rent payment and an argument started between the landlord and the tenant about paying rent in full. Threats were uttered by the tenant to kill the landlord and burn the house down, swearing at the landlord. The landlord told the tenant he should go downstairs. However the tenant pushed the landlord and other occupants assisted to prevent the landlord from falling. The landlord is 84 years old. Police were called, and the tenant went downstairs prior to their arrival. The police went downstairs, and then told the landlord to keep windows closed and doors locked and to be careful when walking to his car because of the threats and a safety issue. They said that if it happens again, to call the police and that the landlord should talk to the Residential Tenancy Branch.

On August 9, 2022 at 11:30 pm. the tenant began banging on the front door of the landlord's residence threatening the landlord to go outside and fight. The landlord was sleeping and didn't hear it, and the landlord's wife told the tenant to leave. The tenant went to the back of the house and continued to yell. The landlord's wife told the tenant to go inside downstairs, and someone called the police. The tenant was arrested, but the landlord's agent is not sure if the tenant was charged with an offence.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenant arrived on the 10<sup>th</sup> day to pay partial rent, and the landlord told him to go elsewhere. The tenant disputed the Notice, but the landlord was not served; the landlord was told by the Residential Tenancy Branch that a hearing has been scheduled for November, 2022. Several notices were served to the tenant including a One Month Notice to End Tenancy for Cause which was hand delivered to the tenant on June 30, 2022 to vacate by July 31, 2022.

On August 9, 2022 the tenant threatened to kill the landlord and burn down the house and has been to jail many times. The landlord fears the tenant.

The landlord's agent was not present during the incidents, and testified as to what the landlord told her to testify because the landlord does not speak English well.

**The tenant** testified that the landlord is the brother of the tenant's father. The tenant has resided in the rental unit for 3 years.

The tenant was going through a hard time, but the landlord is greedy and crazy and makes up lies. In June, 2022 the landlord's agent and the landlord's wife attended the rental unit to get rent. The tenant was \$20.00 short and said he would pay it the next day. The landlord's wife returned and gave the rent money back to the tenant and told the tenant to use it to find a place, then returned again and gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which the tenant disputed. The tenant also went to pay within 5 days but the landlord threatened the tenant and said rent was \$850.00 and took off his slipper and threatened to hit the tenant with it. The tenant's sister was also present. The landlord did not take the money and the tenant didn't threaten the landlord at all.

The tenant phoned the landlord about paying rent, but the landlord pretends he can't hear and told his daughter to tell the tenant to come upstairs to pay the rent, so he did. The parties got into an argument and both were swearing, but there were no threats. The landlord told someone to call police and the tenant attempted to go downstairs, but the landlord put his hand on the door to prevent the tenant from going downstairs because he wanted the tenant to stay until police arrived. The parties were face to face and the landlord put his hands on the tenant's chest. The tenant pushed the landlord's hands off his chest, but didn't push him. The tenant went downstairs and told police that he did not threaten the landlord.

On another occasion when police came, the landlord had called and police asked the tenant if he had threatened the landlord, which the tenant denied. The landlord's agent also agreed at that time that the landlord had lied. When the tenant had arrived home, before going inside the tenant was talking to himself and the police took the tenant away for being drunk in public.

This hearing was expedited because the landlord wants money; there are no safety concerns at all, and the landlord is making all of this up. Since the tenant made the application disputing the previous notice, the landlord has been going into the tenant's

suite snooping around, and has claimed that he does not know the tenant's children and told them to leave.

### Analysis

The *Residential Tenancy Act* permits a landlord to apply for an expedited hearing to obtain an Order of Possession if it is unreasonable or unfair to the landlord or other occupants to wait for a One Month Notice to End Tenancy for Cause to take effect. Such an order can only be made in serious circumstances, and the landlord must provide sufficient supporting evidence. The landlord must be able to demonstrate that the application is made because the tenant or a guest of the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity that:
  - has caused or is likely to cause damage to the landlord's property,
  - 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
  - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property.

I have read the letter provided as evidence by the landlord, which indicates that the landlord was advised by police to not open the door to the tenant in the future because of his extensive police record and aggressive behaviour. It also states that the tenant threatened the landlord on August 9, 2022 to "come out to fight."

The tenant denies ever threatening the landlord, and I accept that. I also consider the testimony of the tenant that the landlord took off his slipper and threatened to hit the tenant with it. In my opinion, that is not something that a person would make up.

The landlord's agent testified that the tenant was also served with a One Month Notice to End Tenancy for Cause but has not provided a copy for this hearing.

In the circumstances described by the parties, including testimony that the landlord's agent gave without personal knowledge, but by testifying what the landlord told her to

testify, I am satisfied that the sequence of events is quite different than described by the landlord's agent. I am satisfied that the parties had a conversation about overdue rent, and the landlord wanted to increase it to get rid of the tenant. I am not satisfied that any evidence of the landlord supports any safety concerns for the landlord or the landlord's property. Therefore, I am not satisfied that the landlord has established that the tenancy should end without waiting for a notice to end the tenancy to take effect, and the landlord's application is dismissed.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety 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: September 21, 2022

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Residential Tenancy Branch