



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Broadview Court Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **INTERIM DECISION**

Dispute Codes      CNR, MNDC, OLC, RP, OPR, OPC, MND, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 19, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act, regulation or tenancy agreement – Section 62;
4. An Order for the Landlord to make repairs – Section 32; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 1, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary order for damage to the unit – Section 67;
3. A Monetary Order for unpaid rent – Section 67;
4. An Order to keep all or part of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

After a hearing duration of 80 minutes, devoted primarily to the issue of the One Month Notice to End Tenancy for Cause (the "Notice"), it was determined that an adjournment was necessary to consider the remaining claims of the Parties. The Landlord stated that the Landlord had not been given sufficient time to present its evidence in relation to the Notice. More time was offered to the Landlord with the understanding that the entire application would have to be adjourned as opposed to the adjournment of everything except consideration of the Notice. The Landlord declined the adjournment of the Notice and stated they were then satisfied with the time provided. As a result, I adjourn the claims of each Party other than the claim in relation to the Notice. This interim decision is not open for reconsideration at the reconvened hearing.

The Parties will be notified of the date and time for the reconvened Hearing. Failure to attend the Hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the Arbitrator and the evidence of the Party in attendance at the Hearing.

### Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to a cancellation of the Notice?

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord states that on or about December 14, 2012 water came into five units in a building containing the Tenant's unit. The Landlord provided a manger's notes indicating that the water was pouring into one unit. The Landlord states that he water was determined to be coming from the Tenant's unit. The Landlord submitted a plumbers report from an inspection of the Tenants unit on December 16, 2012 that notes that the linoleum is curled around the toilet and tube indicating that the tub overflowed. Another report indicates that earlier in December the shower/tub faucets

and internal assembly in the Tenant's unit was removed and replaced. It is unknown why these repairs were made.

It is noted that the Landlord submitted a large amount of evidence from over the course of the tenancy in relation to other issues with the Tenant.

The Landlord states that several months prior to this repairs had been made to the Tenant's taps, that both a few hours later and the next day the repair person had to return to repair the taps again. The Landlord states that the repair person believed that the Tenant was meddling with the taps. The plumber provided a note indicating that over the previous three years of providing service, the plumber has made numerous calls to the Tenant's unit and that the calls could have been avoided had the tenant "not tried to adjust or fiddle with my work" with my The Landlord states that the Tenant has a history of making repairs to the unit without notice or permission, that the Tenant has a history of creating barriers to tradesmen and that the repair person saw tools on the Tenant's bathroom counter. The Landlord states that the Tenant also fills the tub in the unit to overflow as water was noticed at the base of the tub and toilet. The Landlord states that as a result of this leak, the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). There is no dispute that the reasons noted on the Notice is that the Tenant put the landlord's property at significant risk and that the tenant has caused extraordinary damage to the unit.

The Tenant denies making repairs or tinkering. The Tenant's advocate states that leak was caused by the Landlord's overall failure to make timely or effective repairs and the result of ordinary wear and tear of a prolonged tenancy. The Advocate states that the Landlord's acts in relation to repairs can be seen by the state of the disrepair in the Tenant's unit since repairs were made to a leak into the Tenant's unit in 2010. The Advocate states that approximately one year and a half earlier water leaked from another tenant's upper unit into the basement. The Advocate states that all units in the building have leak problems. The Tenant denies overfilling the tub and states that there

is no evidence of this in the Tenant's bathroom such as lifting or buckling flooring in the bathroom.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

The Landlord's only evidence of the Tenant causing the current flood is indirect evidence from several months earlier or on other unspecified occasions over a long term tenancy. No similar or additional evidence was provided for the current flood. As the indirect evidence is from the repair person who has an interest in the outcome of the determination of cause, I find this evidence to be self-serving and not persuasive. Considering the Tenant's undisputed evidence of the Landlord's lengthy time lines for repairs and evidence of floods from other units, and considering the weakness of the Landlord's evidence for this flood, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused the current flood. As a result, I find that the reason for the Notice is not valid and that the Tenant has substantiated the cancellation of the Notice. The Notice is therefore cancelled and the tenancy continues. The Landlord's claim for an Order of Possession is dismissed. As the Tenant has not been found to have caused the damage claimed by the Landlord in the application, I dismiss the Landlord's claim in relation to these damages.

### Conclusion

The Notice is cancelled and the tenancy continues. The Hearing is adjourned.

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: March 18, 2013

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Residential Tenancy Branch

