



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lepik Construction Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held on February 8, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the "Notice")

The Landlord was present at the hearing. The Tenants also attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' application package. The Tenant only uploaded a couple of documents to the tenancy branch website on January 24, 2021, but they were unable to demonstrate that they served these documents to the Landlord. The Landlord stated they never got any evidence from the Tenants, only their Notice of Hearing and application.

I find the Tenants' documentary evidence is not admissible, given it was not sufficiently served on the Landlord, in accordance with the Rules of Procedure. The Tenants were required to served all documents they intend to rely on no later than 14 days before the hearing.

The Tenants confirmed receipt of the Landlord's evidence package and did not take issue with the service of that package. I find the Landlord sufficiently served their evidence for the purposes of this proceeding.

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.

### Preliminary Matters

The Tenants requested an adjournment so that they could obtain medical information, which speaks to why one of the Tenants is having memory problems. I explained in the hearing, that I would not be adjourning the matter, as hardship is not a relevant consideration with respect to whether or not there is a sufficient basis to end the tenancy under the Notice. The Landlord also explained that it would be prejudicial to them to have to wait further, given it has already been 3 months since the Notice was issued. I find the Tenant failed to explain how the evidence he wished to obtain with respect to his medical condition would have a material impact on whether or not there is cause to end his tenancy under the selected grounds. It appears the Tenant wanted to provide explanation about why things happened the way they did. I find the Tenant's request for more time to find loosely related evidence does not outweigh need for the Landlord to have this issue heard, and obtain an order of possession (given the potential risk to other Tenants in the building).

As stated in the hearing, the request for adjournment is denied. The hearing proceeded.

### Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenants acknowledged receiving the Notice on November 4, 2020. The Notice indicates the following reasons for ending the tenancy on the second page:

*Tenant or a person permitted on the property by the Tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*

- *put the Landlord's property at significant risk.*

*Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the last ground identified by the Landlord, as this ground is what my decision hinges upon.

The Landlord explained that the Tenants have rented out this apartment for several years now, but only one of the Tenants resides in the unit (M.J.). The other Tenant has moved in with other family members out of town. M.J. continues to reside in the unit and he acknowledged that he has been having medical challenges which affect his memory.

The Landlord explained that they are mindful that the Tenant does not have a lot of options at this point, but they feel that due to the Tenant's advanced age, and declining cognitive abilities, that he cannot continue to live on his own in this apartment. The Landlord stated that the Tenant has caused a lot of damage to the unit, and they are worried about this continuing to happen if he does not find a different place to live.

More specifically, the Landlord stated that the Tenant has been issued 3 breach letters in the last year. The first breach letter was because he forgot about something he was cooking in the kitchen, which caused significant smoke infiltration in the building. The Tenant acknowledged he forgot about something he was cooking in the kitchen. The second breach letter was issued to the Tenant in September of 2020 because the Tenant had overflowed his bathtub, into the unit below. The Landlord stated that the person was home at the time (below), so the mess was relatively easy to cleanup. The Landlord stated that when they attended the unit, the Tenant had some laundry in the bathtub, with the drain stopper in place, and had forgotten about the water running. The Landlord stated that they were able to clean this water damage up without an insurance claim, because it was caught early.

The Landlord also pointed to the third, and most recent breach letter, where the Tenant again overflowed his bathtub on or around November 3, 2020. The Landlord stated that by the time the Tenant's overflowing bathtub was noticed, several units in the building had already been flooded. The Landlord stated that they were not as lucky this time, and drywall and ceilings had to be opened up because of the sheer volume of water that overflowed from the Tenant's tub.

The Landlord stated that when she went to check on the cause of the flood, she entered the rental unit, and saw the Tenant sitting at his computer with his headphones on, and water flowing all over the floors. The Landlord stated that the flooding was extensive, and the water had obviously been overflowing for a long time.

The Tenant stated he believes the issue was an improperly working drain overflow pipe. However, he provided no evidence to support this. The Tenant acknowledged that he forgot about the running water, but also feels the tub shouldn't have overflowed if the overflow prevention drain was in working order. The Tenant claims he was trying to do some laundry in the tub, and was rinsing some clothing when he left it unattended.

The Landlord stated that when they attended the unit on November 3, 2020, to assess the most recent and significant flood, they noted that there was no laundry in the tub. Rather, it appears as though the Tenant was running a bath to get into, as the plug was in the bathtub drain, and the water was running on full. The Landlord stated that the overflow drain is functioning correctly, but it cannot keep up when the tap is left on full.

### Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The last issue the Landlord identified on this Notice was:

*Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

I have reviewed the testimony and evidence on this matter, and I accept that the Tenant has some medical issues, which are affecting his memory. This is not in dispute. The issue at this point is whether or not the Landlord has sufficiently demonstrated that the Tenant has caused extraordinary damage to the rental unit.

I note the Tenant has had more than one incident in the past year where he has forgotten about important housekeeping matters. There was an issue in March of last

year where the Tenant burned some food. Although this could have been much worse, had a fire started, I note very little damage was caused at that time. Then, it appears the Tenant was using his bathtub in September 2020, when it overflowed, and flooded into the unit below. Again, this issue could have been much worse, had it not been caught as soon as it was. Regardless of whether the Tenant was doing laundry in his bathtub, or having an actual bath, I find he is responsible for the tub overflowing, as he was not sufficiently supervising the tub while the water was running. I do not find it is reasonable to expect a tub overflow valve to completely eliminate any possibility of the tub overflowing with the tap on full.

Then, in November 2020, I note a very similar issue occurred, whereby the Tenant was running water in his bathtub, left the room, and failed to sufficiently monitor what was going on. It appears as though the Tenant forgot about the bath he was running at the time, which caused a significant water event. I note this water event was not the first water event, and it caused significant and extraordinary damage in multiple units below.

I find the Landlord has sufficient cause to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **February 28, 2021, at 1pm** after service on the Tenants.

### Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **February 28, 2021**, at 1:00 p.m. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: February 08, 2021

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Residential Tenancy Branch