



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the tenant: RP, OLC, LRE, MNDCT, CNC  
For the landlord: OPC, FFL

### **Introduction**

This hearing dealt with a cross application. The tenant's application filed on February 06, 2021 pursuant to the Residential Tenancy Act (the Act) is for:

- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;

The tenant's application filed on February 19, 2021 is for

- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 47 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant EM and Landlord KG attended the hearing. The landlord was assisted by advocate and building manager KY. The tenant was assisted by advocate LH. Witness SM for the landlord also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

The tenant affirmed she served the notice of hearing and evidence (the materials) for the application filed on February 06, 2021 on February 17, 2021 and for the application filed on February 19, 2021 on March 03, 2021 by registered mail. The landlord confirmed receipt of both packages.

The landlord testified he served the materials for his application on March 13, 2021 by registered mail. The tenant confirmed receipt.

Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

#### Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing the landlord corrected the spelling of his last name. Pursuant to section 64(3)(a) of the Act, I have amended the applications.

#### Preliminary Issue – Application for cancellation of the Notice

The tenant's application submitted on February 19, 2021 states:

I want to dispute a One Month Notice to End Tenancy for end of employment.

Notice delivery date: Feb 12, 2021.

Applicant's dispute description: After recently buying property and finding out how much my rent is I believe the new Landlord is trying to get me to move out because he believes my rent is too low. All accusations are false and can be proven with my evidence. Eviction notice was presented after I had began a complaint with the residential tenancy branch.

Both parties affirmed they understand the tenant is disputing the February 12, 2021 one month notice to end tenancy for cause, not for end of employment.

Per section 59(2)(b) of the Act, I accept the tenant's application for cancellation of the Notice under section 47 of the Act.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

01. Is the tenant entitled to cancellation of the Notice?
02. If the tenant's application is dismissed, is the landlord entitled to an order of possession?
03. Is the landlord entitled to an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the current landlord purchased the rental unit in November 2020, monthly rent is \$1,000.00, due on the first day of the month.

The tenant affirmed the tenancy started on September 01, 2014. At the outset of the tenancy a security deposit of \$480.00 was collected and the landlord holds it in trust.

The landlord stated he does not know when the tenancy started or if the previous landlord collected a security deposit, as there is no written tenancy agreement.

On February 01, 2021 the tenant emailed the landlord and asked compensation for violation of her tenancy rights.

Both parties agreed the Notice was served and the tenant received it on February 12, 2021. The reasons to end the tenancy are:

The 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.

The Notice is dated February 12, 2021 and the effective date of the Notice is February 12, 2021. The tenant continues to reside at the rental unit.

The details of the Notice are:

Tenants behaviors have caused one tenant to move out and another considering doing so. The tenant has shut off hot water and heat for weeks at time. The tenant also has been turning off breakers depriving the tenants on top and middle floors of power. The tenant has turned off the main water supply valve on more than one occasions depriving the other tenants of water. The tenant has exhibited aggressive behavior to the other tenants . The Tenant has caused excessive noise ie banging on the ceiling of her unit in the early hours waking the tenants above.

The landlord affirmed tenant EM (the tenant) lives on the basement level and there are other rental units on the middle level and upper level. The middle level tenant occupied the rental unit from early January to early February 2021 and the upper level tenant has been occupying the rental unit for more than ten years.

Both parties agreed the tenant has access to the electrical breaker and heat control for all the rental units in her rental unit.

The tenant stated the landlord overloaded the rental unit electrical system and the electrical breaker is constantly flicking. The tenant asked the landlord to repair the electrical breaker so that it stops flicking and the landlord served her the Notice in retaliation.

The tenant submitted into evidence a letter dated February 26, 2021:

I have visited [tenant] in the past in this home and have observed how outdated and unmaintained the facilities are in the building so was aware that this was already a common occurrence. I was not surprised to learn that fuses would trip more frequently following the arrival of new tenants to the middle apartment that would naturally place extra demands on the electrical system.

[...]

What I do find unacceptable is the totally unfounded accusation of deliberate sabotage laid upon[tenant], both from a landlord who, to my knowledge, had never inspected the electrical and heating systems of the building, located in [tenant's] apartment, prior to

his recent purchase of the building and, from the newly arrived middle floor tenant whom [tenant] asked not to smoke inside the home.

The tenant submitted into evidence a second letter dated February 27, 2021:

Myself and [tenant] speak on a daily basis, and throughout the month of January and February 2021. I have known [tenant] ever since she has moved into this residence, and stayed over numerous times.

[...]

I've personally heard the switch flipping (too many times), and almost immediately, [tenant] would switch it back on. Of course, there are times she can't do that, and that is simply when she is not home. When it comes to the middle tenants that moved into the residence of 2021, it is of my personal opinion that they were overloading a specific circuit, which resulted in the constant flipping of the switch.

[...]

As for the central heating system, it is not adequate for three residences

The landlord affirmed he hired an electrician to repair the electrical system and the electrician concluded the electrical system does not need repairs or upgrades. The landlord said the electrical breaker only flicks when the tenant is in her rental unit and the tenant is manipulating the breaker.

KY testified he verbally and by text messages warned the tenant not to manipulate the breaker. The tenant said she did not manipulate the breaker and that she was not warned not to manipulate it.

The tenant affirmed she informed KY in January 2021 that her rental unit was polluted by the marijuana smoke from the middle level tenant and KY asked her to light up a candle and open the window of her rental unit. KY also told the tenant to ask the middle level tenant to close the vents of his rental unit in order to prevent the smoke from polluting her rental unit. The tenant submitted into evidence text messages with KY in January 2021:

T: hey sorry to bother you but if they're smoking inside right now so it's coming into my suite and making me feel sick. How am I supposed to deal with it?

L: I recommend you politely...ask upstairs, to see what they can do to stop the smoke from coming downstairs because it makes you feel sick.

T: I have asked them this. I've tried talking to them politely. Trust me I've tried.[...]

L: Tape / block the vents...Open a window. Light a candle. Ask them to turn the heat down so the air doesn't flow so freely. At this moment, I am unable to do much.

The tenant testified that KY instructed her to turn off the heat of the rental building in order to avoid smoke pollution and she did that once for 30 minutes. On January 19, 2021 the tenant sent a text message to the middle level tenant: "Who ever is home right now is smoking pot inside. The heat is off completely until you stop."

KY testified he did not instruct the tenant to turn off the heat of the rental building and that the tenant has been constantly turning off the heat of the other rental units. KY received complaints from the middle level and upper level tenants regarding the tenant. The middle level tenant wrote a letter dated February 5, 2021:

Beginning shortly after we moved in the tenant in the basement by the name of [redacted] been with-holding our utilities by refusing to flip breakers when they throw, turning off the thermostat for the central air heating in the building and additionally turning off the main water valves.

[...]

From Jan 26th to Present we have had little to no heat in our suite resulting in us needing to constantly huddle under blankets and stay clothed in winter attire just to be comfortable in our unit.

The upper level tenant wrote a letter dated February 6, 2021:

The basement tenant has a history of not getting along with the previous landlord and tenants in the middle floor. In our current situation we have been without heat for two weeks because the basement tenant has turned off the furnace, which is accessed through her suite. She also did this last winter, claiming the previous middle floor tenants were smoking and the heat system brought smoke into her apartment. She told us in person and via text that she was turning the heat off for this reason. In both cases (this year and last year) we have smelled no smoke. As non-smokers living in the top floor of the house, we find it implausible that anyone is smoking inside as we would definitely notice

Starting January 20 we've also had almost daily power issues, as breakers have been flipped. Access to the breaker box is also through her suite. She has requested we do not ask her to flip the breaker back on when it goes out, and instructed us to go through the landlord. For as long as we have lived in this house, we have infrequently experienced flipped breakers and turning the power back on has not been a problem until now.

As we are both working from home due to the pandemic, the lack of heat and unreliable power is directly affecting us in a negative way. When the power goes out, so does our internet and our ability to conduct our work.

The landlord affirmed he warned the tenant that she would be served a one month notice to end tenancy for cause because of her actions regarding the electrical system

and the heat. The tenant testified the landlord did not warn her that she may be issued a one month notice to end tenancy for cause because of the electrical system and heat issues.

### Analysis

The tenant received the Notice on February 12 and filed the application to dispute it on February 19, 2021. I find the tenant's application was submitted by the ten-day deadline to dispute the Notice, in accordance with section 47(4) of the Act.

Section 47 of the Act allows a landlord to end a tenancy for cause:

(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (d)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;

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

In the case before me, both parties provided conflicting testimony regarding issues with the electrical system and the heat of the rental building. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on the letters dated February 26 and 27, 2021 and the convincing testimony offered by the tenant, I find, on a balance of probabilities, that the breaker has been flicking and the electrical system needs upgrades.

The landlord did not submit into evidence documents from the electrician and the middle level and upper level tenants letters were not as convincing and detailed as the letters

submitted by the tenant. Thus, I find the landlord failed to prove, on a balance of probabilities, that the tenant has been manipulating the breaker.

Based on the January 2021 text messages, I find property manager KY did not sufficiently pursue the smoke pollution in the tenant's rental unit with due diligence and implied the tenant should find a solution on her own.

Furthermore, the landlord did not submit into evidence the text messages or any documentary evidence to prove he warned the tenant that she could be served a one month notice to end tenancy because of her actions regarding the electrical system and heat issues.

Based on the more convincing tenant's testimony and the text messages from January 2021, I find the landlord failed to prove, on a balance of probabilities, that the tenant has been constantly turning off the heat of the other rental units and that he warned her that she may be served a one month notice to end tenancy because of her actions regarding the other tenants.

As such, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect and the landlord is not entitled to an order of possession based on the Notice.

The landlord must bear the cost of the filing fee, as the landlord was not successful.

### Conclusion

The One Month Notice dated February 12, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

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: May 13, 2021

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Residential Tenancy Branch