



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC, MNDCT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$875 pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by a legal advocate ("**AV**").

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with his evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Tenant's Monetary Claim**

There was insufficient time at the scheduled hearing to hear submissions on both parts of the tenant's application, despite exceeded the hearing's allotted time by 15 minutes.

When it became apparent we would not be able to finish within the allotted time, I advised the parties that I would sever the tenant's application pursuant to Rule of Procedure 2.3, and dismiss the tenant's monetary claim, with leave to reapply. I judged that this was the less pressing of the two matters before me. Additionally, as there was sufficient time to hear all of the parties' submissions on the issue of the validity of the Notice, I found it appropriate to sever the matters, so I could issue a final decision on that issue, rather than adjourn the hearing thus delaying the determination.

I dismiss the tenant's application for monetary compensation, with leave to reapply.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting April 1, 2019. Monthly rent is \$900 (\$875 + \$25 for parking) and is payable on the first of each month. The tenant paid the landlord a security deposit of \$437.50. The landlord still retains this deposit. The rental unit is an apartment in a multi-unit apartment building.

At the root of this dispute is the rental unit's electrical system.

The tenant testified that between February 2021 and April 2021, one of the breakers to the rental unit regularly tripped. She testified that she made numerous requests to the landlord to address the issue, but the landlord was slow to act. She testified that she notified the landlord of the issue as early as February 5, 2021 and stopped by his office to ask him to purchase new breakers throughout February and March 2021.

The tenant did not submit any documentary evidence corroborating these dates. The earliest date where she advised the landlord of the electrical issue that is corroborated by documentary evidence is March 21, 2021, when she sent the landlord the following text message:

i need 2 new breakers, the dishwasher and tv circuits both continue to trip.

[unrelated matter]

ty for your quick action

The tenant submitted a screenshot of this text message. The screenshot does not show any response from the landlord, but does show three subsequent text messages from the tenant to the landlord regarding the issue:

April 1, 2021

the tv circuit just tripped again, and the tv wasn't on. just my reading lamp was on. it's been more than a week since my last text of march 21st. !

April 1, 2021

ps. when I flipped it back on, it immediately flipped back off! I had to try twice to get it to stay on.

April 4, 2021

Your electrician has not arrived at 8:30 AM, yet, as you said he would, and it's 9:15 AM.

The tenant testified that after sending the March 21, 2021 text message she stopped by the landlords' office, then the landlord indicated that he would have an electrician look at the breakers. She testified that she offered to change the breakers herself, but the landlord insisted on using an electrician

The tenant testified that after sending the April 1, 2021 text message, she called the building manager to express the urgency of the repairs needed. She demanded that a new breaker be installed immediately. She testified that the landlord hung up on her.

On April 2, 2021, the tenant testified that, assisted by her neighbour holding a flashlight, she undertook the repairs herself, accessing the electrical panel, identifying that the panel contained a non-essential breaker, and switch this breaker with the breaker for her living room.

After repairing the breaker, on April 2, 2021, she drafted a letter to and the landlord's employer (who is a signatory of the tenancy agreement) to inform them of what she had done and how the landlord had conducted himself. In addition to this, she wrote:

It's Good Friday. [The landlord] isn't going to deal with this issue until at least Wednesday, since he will take Holiday Monday off. If I call an electrician, they will charge me at least time and a half, and even though I could legally take that cost off my may rent check I don't have that kind of money in my pocket. I could have put the cost on my credit card, but that didn't occur to me until today. And I know the electrician wouldn't want to come Friday night, he would want to come today sometime.

She sent this letter on April 3, 2021

The tenant testified the landlord works Monday, Wednesday, and Friday, and, as April 5 was Easter Monday, the landlord would not have been in on that day.

The tenant testified that, while the tenant was writing this letter, the landlord sent her a text message stating:

I just received report you plan to tamper with your electrical panel. DO NOT Touch THAT ELECTRICAL PANEL. If you do I will commence immediate

eviction action. Govern yourself accordingly. The electrician hopes to be there Monday. I will keep you posted.

The tenant testified that on April 3, 2021 the landlord left a voicemail for the tenant saying that a handyman would inspect the electrical panel that day, and an electrician would attend the following day. The handyman attended as indicated by the landlord, inspected the panel, but did not check the breaker itself. The tenant testified that the handyman did not find any issues with the electrical panel, or the change in breakers that she made.

On April 4, 2021, the landlord texted the tenant that the electrician would not be coming until April 5, 2021.

The tenant testified that when the electrician did arrive, he tested the broken breaker and confirmed that it was broken. He told her that he would purchase a new breaker to replace the nonessential breaker that she had swapped in for the living room breaker. He did not make any comment as to the quality of the tenant's temporary fix but did not express any concern as to any danger it might pose.

The tenant testified that to date, the nonessential breaker has not been replaced and that on April 9, 2021, the landlord served her with the Notice. The Notice set out the following reasons for ending the tenancy:

The tenant or 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 provided the following details of the events leading to the ending of the tenancy:

On the evening of 2 April 2021, despite being told an electrician had been called, the tenant, without authorization, replaced a breaker switch on the electrical panel. She is not an electrician and has tampered with a vital electrical system putting herself, the suite and the building in danger. The tenant has also threatened and harassed another tenant when her activity was reported. She turned a routine repair into an emergency repair, necessitating our building handyman checking the panel to determine its safety on September 3 April, 2021, because the electrician was unavailable until the 4th of April 2021. The electrician subsequently inspected the panel, made the necessary repairs, including the breaker switch which the tenant had installed incorrectly. This is a dangerous situation that cannot be tolerated. This tenant must vacate the unit to ensure the safety of the building and the well being of tenants. The tenant must

vacate the premises no later than 12:00 PM (noon) 31 May 2021, and ensure the suite is left clean, undamaged and empty.

The landlord disputed the tenant's assertion that she contacted him multiple times in February and March 2021 to repair the breakers. He stated that he was generally aware of the tenant's electrical issues and asked her to "troubleshoot" the problem and try to determine if the issue was with an outlet or with the breaker itself. He could not recall the exact date he asked her to do this but testified that it was sometime before March 21, 2021. He acknowledged receiving the tenant's March 21, 2021 text message and that he spoke with her afterwards and advised her that he would have an electrician look it. He testified that he immediately contacted an electrician, but "went back and forth" about dates and was unable to pin down a date the electrician would come to the rental unit by April 1, 2021.

The landlord stated that, at this point, he did not consider the tenant's request for repairs to be "of an urgent nature". He testified that his wife attended the rental unit and observed that the tenant had overloaded the electrical system, having at least two power bars full of electronics (including three "grow lights") plugged in. No documentary evidence was submitted to support this.

The landlord acknowledged receiving the tenant's text messages on April 1, 2021, and set about booking an electrician to attend as soon as possible, which was April 4, 2021. He testified that he told the tenant this and instructed her not to tamper with the electrical panel. He testified that he received six phone calls from the tenant on April 2, 2021 relating to the faulty breaker. He stated he repeatedly told her not to tamper with the electrical panel. He denied hanging up on her.

The landlord testified that, despite these warnings, she accessed the electrical panel and switched out the breakers. He testified that he sent a handyman to look at the breakers immediately after learning that the tenant tampered with the breakers, but that the handyman "didn't notice any obvious safety issues". However, the handyman also told the landlord that he would never have opened the electrical panel because he was not an electrician. The landlord submitted an email from the handyman dated April 3, 2021 wherein he wrote:

Upon inspection, it appeared that the breaker was wired correctly and the breaker that was changed was in the space of the unused breaker and was in the off position. There appeared to be no immediate safety issue visible (same amperage breaker and wiring appeared to be secured).

The landlord's electrician attended the rental unit on April 5, 2021. The landlord testified that the electrician told him that the tenant's installation was not "quite done right". He did not say that it was done in a dangerous fashion. I am unsure what, specifically, was done incorrectly. The landlord did not submit any statement, email, or other piece of correspondence from the electrician relating to the condition of electrical panel.

The landlord submitted an invoice from the electrician dated April 30, 2021 for two visits to the rental unit: one for a “safety check” and another for “changing breaker”. The invoice does not contain any comments as to the result of the safety check or whether the quality of the work done by the tenant.

The landlord argued that the tenant did not have any formal electrical training (which the tenant admitted), and that accessing the panel without such training is dangerous and endangered the other occupants of the residential property and the put the entire residential property at risk. He asserted that the tenant could have started a fire in the residential property due to her tampering. He did not provide any documentary evidence to support this assertion.

The tenant denied that she put the occupants or the residential property itself at risk. She testified that, despite not having any formal training, she “knew what [she] was doing”. In support of this assertion, she pointed to the fact no harm had come to anyone or anything as a result of her switching the fuses, and that neither the handyman nor the electrician stated that she had done anything dangerous.

The tenant also argued that she was entitled to make the repairs to the electrical panel, as they were “emergency repairs” as defined by the Act, as she met all of the criteria which permitted her to do so set out at section 33(3) of the Act.

In addition to the landlord’s allegations about the dangerous repairs, the landlord alleged that the tenant unreasonably disturbed her neighbour. He testified that he heard from the tenant’s neighbour on April 2, 2021. She wrote:

Hi [landlord] maybe this is not my business, but [tenant] borrowed screwdriver. When I asked her why, she said she is planning to switch the Breakers around tonight. This makes me very nervous as I live next to her. Do you know if this would be dangerous? Sorry to bother you with this but I don't know what to do. Is there anyone here who knows about electrical stuff.

The landlord testified that this neighbor and the tenant exchanged text messages in early April 2021. He submitted the tenant’s side of this text message exchange into evidence. It states:

May I please borrow a standard slot screwdriver? (4/2/2021 5:18 PM)

Ta-da! (4/4/2021 6:15) [date as written]

Did you tell [landlord] that I was going to work on the electrical panel? (4/3/2021 10:42 AM)

Cat got your tongue? 4/3/2021 9:30 PM

You need to read the results of your actions. I will show you.

Then you can tell what happens when you stick your big mouth into someone else's business. Don't you remember the last you did that to me?

Come get your screwdriver. I have a favor to ask of you. 4/4/2021 12:04 AM

I'm up 4/4/2021 9:18

If you don't come here and face the music... issues like this can sneak up behind you, grab your ass and get you drunk. Please come over and get your screwdriver. 4/4/21 9:39

The neighbour signed the printout of this exchange and wrote "these emails are correct verbatim".

The landlord testified that the neighbour sent a single text message in this exchange, on 4/3/2021 at 9:32 pm, which reads:

I told [landlord] to listen to your concerns and send electrician sooner than later, that is all I know. I have nothing else to say.

The landlord testified that this email exchanged amounted the tenant threatening and unreasonably disturbing her neighbour.

In her written submissions, the tenant wrote:

The conflict between the Tenant and her neighbour [name redacted] does not rise to the level of warranting an eviction. The interpersonal conflict between [the tenant and her neighbour] consists of a single conversation over text message, and is not indicative of a sustained or ongoing pattern of disagreement. The Tenant did not unreasonably disturb another occupant.

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

So, despite this being the tenant's application, the landlord bears the evidentiary burden to prove that the Notice is valid.

Section 47(1)(d) of the Act states:

**Landlord's notice: cause**

**47(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;

These reasons for ending the tenancy align with those reasons set out by the landlord on the Notice.

The second and third of these reasons rely on the same set of facts. The landlord argues that by accessing the electrical panel, the tenant endangered the other occupants of the residential property and the property itself.

1. Did the tenant seriously jeopardize the safety of the other occupants or put the landlord's property at significant risk?

The landlord asserted that by accessing and making repairs to the electrical panel, the tenant endangered the other occupants and put the landlord's property at risk. He alleged that she could have started a fire. The landlord provided no evidence as to how the actions taken by the tenant could have caused a fire. The documents provided from the electrician do not state the potential for any damage (fire or otherwise) that could have resulted from the tenant's actions.

In the absence of any evidence supporting the landlord's assertion that the tenant's act of performing repairs to the electrical panel could have caused a fire, I cannot find that the landlord has discharged his evidentiary burden to prove it is more likely than not that the tenant seriously jeopardized the health or safety of the other occupants in the residential property or put the residential property at serious risk.



While an arbitrator may take notice of certain, commonly known, facts, I do not think that this would extend to the possible effects of the tenant's actions might have on other occupants or the property. I do not know what safety mechanisms, if any, the panel had in place to prevent fires (or even if such mechanisms exist). I do not know if the actions undertaken by the tenant have the possibility to cause a fire. I require expert evidence on this point (which could be provided by a statement, report, email, or testimony of the electrician). The Residential Tenancy Branch is not an investigative body. It does not conduct research of its own. Instead, arbitrators rely on the information provided by the parties in order to make their decisions. In this case, the landlord has failed to provide sufficient evidence to support his claim that the tenant's actions endangered the property and its occupants.

I should note that I am prepared to take notice of the fact that accessing the electrical panel is a dangerous activity and is best left to trained professionals. I am also prepared to take notice of the fact that such an action is dangerous to the person undertaking it, as common sense would dictate it is a person is endangered by putting a metal screwdriver into a device which channels electricity. I am not prepared to take notice of any danger beyond that, however. I am completely ignorant of what, if any, safety mechanisms exist in modern electrical panels.

As such, I find that the landlord has failed to prove that the tenant acted in such a way that would give rise to ending the tenancy pursuant to sections 47(1)(d)(ii) or (iii) of the Act.

Additionally, I would also like to address the argument advanced by the tenant that she was entitled to undertake the repairs because they were "emergency repairs". Section 33 of the Act, in part, states:

**Emergency repairs**

**33** (1) In this section, "emergency repairs" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

[...]

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The landlord argued that the repairs were not “emergency repairs” because for much of the time he was aware of them, they were not “urgent”, and that the tenant was not entitled to make the repairs once they became urgent (on April 1, 2021) as she did not afford him reasonable time to make the repairs.

I need not make a determination on this point, as, even if the landlord is incorrect, I would still find that the tenant is not entitled to act as she did. Section 33(3) of the Act grants the tenant the authority to “have emergency repairs made”. This language is substantively different from “make repairs”. The passive language of the Act implies that the tenant is authorized to engage someone to make the repairs on her behalf. I do not find that it authorizes the tenant to undertake the repairs herself. Such an interpretation is consistent with the types of repairs this section authorizes. The authorized repairs are, for the most part, repairs to complex systems in the rental unit (electrical, plumbing, heating) or to major components of the rental unit (the roof).

I find it reasonable to infer that the, due to the nature of these repairs, the drafters of the Act would not intend to authorize someone with no experience or qualifications to attempt to repair the damage. The risk of the attempted repair causing more damage than it would prevent is too great.

As such, even if the repairs required were “emergency repairs” and even if the tenant had given the landlord sufficient time to make the repairs (on which I make no finding), the tenant still would not have been entitled to make the required repairs herself.

## 2. Did the tenant unreasonably disturb her neighbour?

The landlord argued that the text messages sent by the tenant to her neighbour rise to the level of an “unreasonable disturbance” and warrant the ending of the tenancy. As I have noted above, the landlord only submitted one side of the text message exchange into evidence. I cannot say why he chose to do this, as it should have been a simple matter to provide the entire conversation. Without the entire conversation, I am deprived of the context in which the tenant’s conversations were made. I have the landlord’s testimony as to the contents of one of the messages sent by the neighbour. However, in light of the fact that this was not submitted as documentary evidence, I have doubts as to its accuracy.

In any event, I do not find the text messages to be particularly threatening. Prior to the text message exchange, it would seem that the neighbour and the tenant were on reasonably good terms (why else would the tenant ask the neighbour to borrow a

screwdriver). Then, after the tenant was threatened with eviction by the landlord for fixing a problem that she had asked him repeatedly to fix, the tenant was understandably upset. She appears to have directed her anger partially at the neighbour ("you can tell what happens when you stick your big mouth into someone else's business"). While such a redirection of anger is not productive, and should not be encouraged, it is at least understandable. The tenant was undoubtedly frustrated by the whole situation and dislikes that the landlord has acted negatively against her due to what she perceives to be the action of the neighbour.

No evidence was presented as to what allegedly happened the "last time" the neighbour allegedly "stuck her big mouth into someone else's business". As such, I cannot say if this constitutes a threat (for example, if last time 'I took some negative action against you'), a caution (for example, if last time 'you felt terrible about it'), or a plea (for example, if last time 'I suffered consequences you did not anticipate as a result of your actions'). Without knowledge of what happened before between the parties, I cannot find that this comment amounts to a threat, especially, as stated above, as the parties appeared to be on good terms prior to this exchange.

The final text message sent by the landlord demanding the neighbour "come here and face the music" and then suggesting that "issues like this can sneak up behind you, grab your ass and get you drunk" does seem threatening (although I am uncertain if getting someone drunk constitutes a threat). However it is followed by a polite comment to "please come over and get your screwdriver".

The tone of these text messages varies greatly from message to message, and even within individual messages. It is difficult to say what the intent of the sender was, or how the recipient interpreted them. The neighbour did not appear at the hearing, and the tenant did not give any evidence as to her intention when writing them.

Furthermore, there is no evidence before me that these text messages represent anything more than an isolated incident.

Given that the tenant was without consistent power, that she had been trying to get the landlord to fix it for at least several weeks (both of which suggest that such communications were the result of poor stress management, rather than ill-intent), that I only have one side of the text message conversation, that the text messages I do have are not, on their face, overtly threatening and capable of holding multiple interpretations, and that the tenant did not attend the hearing to provide testimony as to the effect these messages had on her, I decline to find that these text messages amount to an unreasonable disturbance of the neighbour.

As such, I find that the Notice is invalid and of no force or effect. The tenancy shall continue.

I caution the tenant against doing any further work herself on the electrical panel, for the reasons stated above.

**Conclusion**

The Notice is cancelled and of no force or effect. The tenancy shall continue.

The tenant's application for monetary compensation is dismissed, with 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 2, 2021

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Residential Tenancy Branch