



Order under Section 69  
**Residential Tenancies Act, 2006**

**File Number:** TEL-17895-21

**In the matter of:** BASEMENT APT, 167 SHROPSHIRE DRIVE  
SCARBOROUGH ON M1P1Z6

**Between:** Harold Brillinger Landlord

**and**

Cheryl Braun Tenants  
Jessica Braun  
Richey Smith

Harold Brillinger (the 'Landlord') applied for an order to terminate the tenancy and evict Cheryl Braun (CB), Jessica Braun (JB) and Richey Smith (RS) (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by teleconference on September 7, 2021.

The Landlord and the Tenants CB and RS attended the hearing.

**Determinations:**

1. For the reasons below, the Landlord's application shall be dismissed.
2. The residential complex is a house. The rental unit is the basement of the house.

*First voidable N5 notice*

3. The Landlord served a first voidable N5 notice on the Tenants on December 10, 2020 on the ground of substantial interference. This N5 notice alleges the following:
  - a) the Tenants impeded entry into the rental unit by the Landlord on December 8, 2020;
  - b) the Tenants intentionally depleted the hot water on November 25 and 28, 2020;
  - c) the Tenants shut off the electrical breakers on September 18, 2020 and on October 12, 15, and 16, 2020;

- d) the Tenants shut off the hot water on September 18, 20, and 23, 2020 and on October 5, 16, and 23, 2020;
  - e) the Tenants blare music;
  - f) the Tenants send an unreasonable number of text messages to the Landlord; and
  - g) the Tenants frequently argue loudly.
4. The last three allegations did not state when the conduct occurred (or in the case of the texts, how many within what range of dates) and so this part of the first voidable N5 notice is invalid. These allegations do not provide sufficient details for the Tenants to know the case to meet.
5. The Landlord gave no evidence to support the allegations of impeding entry, intentionally depleting hot water on the dates alleged, shutting off electricity on the dates alleged, or shutting off the hot water on the dates alleged. The Landlord's witness MM (who lives on the main floor of the house) testified that the Tenants shut off the water on many different dates, including some time in the month of October 2020, but did not testify that this happened on any of the specific dates in the first voidable N5 notice.

*Second voidable N5 notice*

6. The Landlord served a second voidable N5 notice on the Tenants on January 30, 2021 on the ground of substantial interference. This N5 notice alleges the following:
- a) the Tenants intentionally and unnecessarily increased the utility costs by over-using the washing machine;
  - b) the Tenants bang on their ceiling;
  - c) the Tenants shut off the water on January 10, 2021; and
  - d) the Tenants frequently argue loudly.
7. The Landlord testified that he received text messages from the Tenant saying that the upstairs tenants were using the washing machine too much. The Landlord testified that he asked MM to keep track of how frequently the Tenant was doing laundry, and then he compared the texts from the Tenant to the information provided by MM. The Landlord added that he has been in the basement to do maintenance and it was damp there. The Landlord did not refer to any texts or notes provided by the Tenant or MM.
8. MM testified before the Landlord did and she did not mention anything about the Tenant's use of the washer.
9. The Tenant CB testified that the Tenants have not been doing excessive amounts of laundry.
10. The Landlord's evidence is insufficient to establish, on a balance of probabilities, that the Tenants have been overusing the washing machine. That he compared information from the Tenant and MM about the use of the laundry does not prove anything without also referring to the specific information upon which he relied. The basement dampness could be caused by many different things; it is not conclusive evidence that the Tenants

overuse the laundry. It is also interesting that MM gave no evidence about this at all. Weighed against CB's testimony denying this conduct, the Landlord's evidence falls far short of meeting his evidentiary burden.

11. After considerable prompting, MM testified that on January 20, 2021, from 3:00pm to 3:30pm the Tenants cut off the water in the house, depriving MM of water. MM testified that she was doing her dishes and the water just stopped flowing. MM had earlier testified as to many specific dates upon which the water to her unit just stopped running.
12. The Tenants have access to the water shut off valve in the basement.
13. MM testified that sometimes when the water would not work she would contact the Landlord, who suggested it might be due to construction work in the area.
14. CB testified that the Tenants have never shut off the water.
15. MM and the Landlord urged me to draw an inference, based on the circumstantial evidence that the water is shut off so often and the Tenants have access to the shut off valve, that the Tenants shut off the water on January 20, 2021.
16. The Landlord gave no evidence that he ever had a plumber investigate why the upstairs tenants' water would not flow so frequently. The Landlord gave no evidence that he ever took steps to deprive the Tenants of access to the shut off valve or even investigated how this could be done. In other words, the inference that the Landlord wants me to draw is harder to draw in the absence of any evidence that eliminates other causes for the water disruption.
17. Based on the weakness of the Landlord's evidence and CB's testimony denying this conduct, I cannot find, on a balance of probabilities, that the Tenants shut off water to the house on January 20, 2021.

*Non-voidable N5 notice*

18. The Landlord also served a non-voidable N5 notice on March 30, 2021. The Landlord did not establish any allegations in either of the voidable N5 notices that he served on the Tenants. The Landlord was therefore not entitled to rely on the second N5 notice for termination of the tenancy. To find otherwise would enable a landlord to serve a first, voidable N5 notice based on false allegations in order to be able to serve a second, non-voidable N5 notice. This would undermine the purpose of the provisions in the Act requiring that landlords first serve voidable notices of termination. One of the Act's explicitly stated purposes is to prevent illegal evictions. Requiring landlords to establish at least one of the allegations in their voidable N5 notices is consistent with this purpose of the Act.
19. Based on the reasons above, I find the second N5 notice to be invalid.

*Disposition*

20. The Landlord did not establish any allegations in the voidable N5 notices and the second N5 notice is invalid. An application for eviction cannot be granted where one notice is invalid and the allegations in the other were not proven. The Landlord's application shall therefore be dismissed.

**It is ordered that:**

The Landlord's application is dismissed.



**December 22, 2021**  
**Date Issued**

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Renée Lang  
Member, Landlord and Tenant Board

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This order contains all reasons for the determinations and order made. No further reasons will be issued.

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.