Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC OLC FFT**

Introduction

This hearing was reconvened by way of conference call in response to an application for dispute resolution ("Application") filed by the Tenants pursuant to the *Residential Tenancy Act* (the "Act"). The Tenants applied for the following:

- an order cancelling a One Month Notice to End Tenancy for Cause dated February 24, 2022 ("1 Month Notice") pursuant to section 47;
- an order that the Landlord comply with the Act, the *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The original hearing of the Application was held on June 10, 2022 ("Original Hearing"). There was insufficient time to take all the parties testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing and issued an interim decision dated June 12, 2022 ("Interim Decision"). In the Interim Decision, I ordered that neither the Tenants nor the Landlords were permitted to serve any additional evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for this adjourned hearing, scheduled for June 20, 2022 at 11:00 am ("Adjourned Hearing"), were served on the parties by the Residential Tenancy Branch ("RTB").

The two Tenants ("LS" and "JS"), the two Landlords ("ML" and "AL") and the Landlords' advocate ("IL") attended the Original Hearing and the Adjourned Hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

LS stated the Tenants served the Notice of Dispute Resolution Proceeding for the Original Hearing and their evidence ("NDRP Package") on each of the Landlords by registered mail on March 11, 2022. LS submitted the Canada Post tracking numbers for service of the NDRP Package on each of the Landlords to corroborate her testimony. The Landlords acknowledged receipt of the NDRP Package. I find the Tenants served the NDRP Package on each of the Landlords pursuant to the provisions of sections 88 and 89 of the Act.

LL stated the Landlords served their evidence on the Tenants' door on June 2, 2022. LS acknowledged the Tenants received the Landlords' evidence. I find the Landlords' evidence was served on the Tenants pursuant to the provisions of section 88 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claim

The Application included a claim for an order that the Landlord comply with the Act, Regulation and/or tenancy agreement ("Claim for Compliance").

Rule 2.3 of the RoP states:

> 2.3 **Related issues**
>
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Brach are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Application was to determine (i) whether the tenancy would continue or end based on the 1 Month Notice and (ii) whether the Tenants were entitled to recover the filing fee of the Application. As such, I severed and dismissed the Tenants' Claim for Compliance with leave to reapply.

Issues to be Decided

Are the Tenants entitled to:

- cancellation of the 1 Month Notice?
- authorization to recover the filing fee of the Application from the Landlords?
- if the 1 Month Notice is not cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The parties were told to refer to any evidence they submitted that they wanted me to consider while they gave their testimony and made their submissions. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on January 25, 2018, for a fixed term ending January 31, 2019, with rent of $1,400.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of $700.00 by December 30, 2017. LL stated the Tenants paid the deposit and the Landlords are holding the deposit in trust on behalf of the Tenants.

LL stated the 1 Month Notice was served on the Tenants' door on February 28, 2022. LS acknowledged the Tenants received the 1 Month Notice. The 1 Month Notice stated the causes for ending the tenancy were:

- the tenants have allowed an unreasonable number of occupants in the unit;
- the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- 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;
    - has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and

- has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The details of the causes provided in the 1 Month Notice for ending the tenancy were:

> Tenant does not comply with lease, son was a minor at the start of the lease, shared custody with father, three nights with tenant and four with father. Now he is an adult and the tenant insists that because he is on the lease he is entitled to live here as long as he wants. Prior to viewing the suite, the tenant claimed she was "basically on her own". He is now an adult and not complying with the rules. Mother has thermostat at 27 and his bedroom windows is open day and night even at the time of this application. Mother states that her rent includes utilities. Tenant has also denied that the window was open and blamed the tenant next door. We can prove that there isn't a bedroom window on the north side of the house. The bedroom in question is on the south side. She has called the police on us for false accusations due to her putting tape on her door making sure the landlord will not enter her suite. She also blocked a fire door with heavy book shelf. She has been a very difficult tenant to live with, emails, texts, phone calls complaining all the time. We are two seniors above her, walking barefeet. We are stressed out. Can no longer support her in her excessive needs and wants. She was without a rent increase for three years, and she did not appreciate it. She has made an application to RTB and changed her mind. She signed papers with a new understanding. We no longer can tolerate her. She has been rude, aggressive and a bully.

IL submitted into evidence an email dated December 28, 2017 wherein LS stated she was a single working mom and that one of her sons lives with her part-time. IL stated the Landlords entered into the tenancy agreement on the basis that JS would live in the rental unit for two days a week until he was an adult. IL stated it was the Landlords position that JS is not entitled to live in the rental unit under the current tenancy agreement. IL submitted into evidence a copy of an email dated February 23, 202 from AL which advised that, if it was the intent of LS that JS live in the rental unit permanently, the Landlords were willing to negotiate with her, providing JS complied with the rules. IL stated it was the Landlords' position that the failure of JS to vacate the rental unit when he became an adult was a breach of a material term the tenancy agreement. IL stated it was also the position of the Landlords that, as a result of the JS living in the rental unit in violation of the tenancy agreement, there were an unreasonable number of occupants in the rental unit. IL submitted that it was also the Landlords position that, as JS did not vacate the renal unit when he reached the age of

majority, the Tenants have engaged in an illegal activity that has or likely to adversely a lawful right or interest of the Landlord. IL did not submit a copy of the federal or provincial law or municipal bylaw to support the Landlords assertion that there is cause to end the tenancy on the basis that the Tenants had engaged in an illegal activity.

IL stated the Tenant has also interfered with the lawful right of the Landlords. IL stated LL set rat traps around the recycling container on the exterior of the residential property. IL submitted into evidence an email dated April 3, 2022 from LS in which she states that she had a conversation about rat traps in the common area several months before. LS then stated:

> "The trap recently set up beside the tenants recycling area, if it can be moved behind the bin rather than close to the front – the string that the trap is attached to is quite long – if you capture something it will inevitably run right onto the walkway & die right in the path that I walk through daily.

IL stated that LS then placed a recycling bag on top of the rat trap to cover it. LL stated there are two basement suites, one in the north and one in the south, and the Tenants occupy the southern rental unit. LL stated the Tenants do not comply with the rules. LL stated that, on one occasion, he sent the Tenants a picture that showed the lid left half-way off the recycling container after LS had used it. AL stated that, when it rains, the container fills with water. AL stated there are no rat traps on the north side because everything is closed in so that rats cannot get in. However, on the south side where the Tenants reside, LS leaves the recycling container open so rats can get into it.

IL stated it was a really cold winter with temperatures at -10 to -18 C and the Tenant left the heat on with the window open. IL stated LL has explained to LS that the HVAC system is most effective when the windows are closed. The Landlords did not submit any evidence regarding the impact that open windows would have on the HVAC system. IL submitted that, as the Tenants were not placing the lid on the recycling container and continued to leave the windows open to the rental unit, the Tenants were in breach of a material term of the tenancy agreement.

IL stated there are always complaints from LS about noise levels from the Landlord's living area above her. IL stated the Landlords are unable to take showers or baths after 7 or 8 pm as the water noise disturbs the Tenant. IL stated it was the position of the Landlords that the constant complaints from the Tenant were significantly interfering with or unreasonably disturbing the Landlords and were seriously jeopardizing the health of the Landlords.

IL stated LS sent an email to the Elders from the Landlords' Christian congregation. IL stated two Elders of the congregation had a Zoom meeting with the Landlords on April 21, 2022 as a result of the LS' email. AM stated the Elders would not disclose the contents of the email with the Landlords because the email was addressed to them but did state it reflected very poorly on the Landlords as well as their congregation and community. AM stated that one Elder told them during the meeting that the Landlords were a "reproach" to him, meaning the Landlords are giving that Elder a bad name because of their conduct. IL stated that, as the Landlords' faith and their congregation is everything to them, they were heartbroken after the meeting. LL stated the meeting with the Elders was devastating on the Landlords after being a member of the congregation for over 40 years. LL stated he has a heart condition and he had a heart attack the day after the meeting with the Elders. LL submitted into evidence a copy of a letter dated April 5, 2022 from his physician that stated LL has been involved in a very stressful situation with his tenant and he has had acute elevations in his blood pressure and has affected his mental health. The physician's letter stated LL's overall health would benefit from getting the situation resolved sooner rather than later. It was the Landlords' position that LS had jeopardized the health and interest of the Landlords by communicating with the Elders in respect of a tenancy matter.

LS submitted a copy of the tenancy agreement and the addendum to it. LS stated the tenancy agreement names JS as a tenant to the tenancy. LS stated there is no term in the tenancy agreement that prevents JS from living in the rental or must vacate the rental unit when he becomes an adult. LS stated the rental unit has two bedrooms. The Tenant stated she contacted two companies to get their professional opinion on the impact of leaving windows open with a HVAC system. The Tenant stated those professionals told her that an open window will not alter or change HAVAC equipment or settings.

LS stated the Landlords do not have evidence any of the windows were open during the entire winter. The Tenant admitted she received an email on October 17, 2021 where the Landlords reminded her that the windows were open on October 8 and 15, 2021. LS stated she was at work on those dates and it could have been different dates but the windows were not open all day and night. LS stated she has a temperature control in her rental unit. LS stated she was home when the Landlords took the picture of the window when she left it open for 45 to 60 minutes. LS stated that, other than the Landlords' complaints about the window being left open, she has not done anything wrong. LS stated that, when the Landlords performed an inspection in April 2022, they told her the windows must be closed tight. LS stated that, while the Landlords state it is

a rule that the windows cannot be opened, there is nothing in the tenancy agreement that requires that the windows be closed at all times. LS stated the Landlords were grasping at straws in respect of noise complaints from her. LS stated that her email to the Landlords regarding the rat trap was a request for the trap to be repositioned and not a demand that it be removed entirely.

LS state that her complaint about showering, flushing and other noise was prompted by about 10 days of stomping feet in the room above her bedroom while she was sleeping and that is why she sent the email to the Landlords about noise. LS stated she is a very patient person and does not complain about every noise she might hear.

LS stated it has been very challenging and stressful during the past several months to find out what the eviction was about. LS stated there was a previous tenant of the Landlords in one of the rental units who attended the same Christian congregation as the Landlords and that she kept in touch with that tenant. LS stated the Landlords had bullied that tenant out of the rental unit. LS stated she was desperate to get information regarding the eviction notice so she wrote to the congregation and asked if someone could contact her regarding her Landlords. LS stated she talked to an Elder of the congregation. The Tenant said she did not say anything bad about the Landlords to the Elder.

LS stated the Landlords drove to her former landlords home in April 2022 and spoke to the son of her past landlord. LS stated she found out about the Landlords talking to the son and she then reached out to the wife of her former landlord. LS stated she asked the wife whether she was aware the Landlords were trying to evict her from her current tenancy. LS stated the wife was quite upset that the Landlords had spoken to the son and sent LS an email that LS provided to the Landlords.

LL stated the Tenant sent the Landlords an email at 7:30 pm one evening wherein she complained about the shower being used and reminded them that they knew LS' schedule. LL did not submit a copy of that email into evidence. AL stated the Tenant sent an email on November 1, 2021 in which the LS complained about loud walking directly above her bedroom on the evening of October 31, 2021 and told them they know what her schedule is. LL submitted a copy of that email to corroborate his testimony. LL confirmed the Landlords did speak to the son of the Tenants' former landlord to obtain information regarding LS. The Landlords submitted the constant complaints from the Tenant regarding noise were unreasonably disturbing the Landlords.

Analysis

Subsections 47(1)(c), 47(1)(d)(i), 47(1)(d)(ii), 47(1)(e)(ii), 47(1)(e)(iii), 47(1)(h), 47(2), 47(3), 47(4) and 47(5) of the Act state:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[…]

(c) there are an unreasonable number of occupants in a rental unit;

(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

[…]

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

[…]

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[…]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

[…]

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I note that subsections 47(1)(d)(ii), 47(1)(d)(ii) and 47(1)(e)(ii) use either the adjective "significantly", "unreasonably", "seriously" or "adversely" as part of the cause stated in those subsections. This means a landlord must prove the activity, behavior or misconduct of the tenant must be sufficient to warrant the eviction of the Tenant.

LL stated the Landlords served the Tenants with the 1 Month Notice on the Tenants' door on February 28, 2022. Pursuant to section 90 of the Act, I find the Tenants were deemed to have received the 1 Month Notice on March 3, 2022. Pursuant to section 47(4) of the Act, I find the Tenants had until March 14, 202, being the next business day after the 10-day dispute period, to make an application for dispute resolution to dispute the 1 Month Notice. The records of the RTB disclose the Application was filed by the Tenants on February 28, 202. As such, I find the Tenants filed the Application within the 10-day dispute period permitted by section 47(4) of the Act.

IL submitted an email dated December 28, 2017 in which LS stated she was a single working mother and that one of her sons lived with her part-time. IL stated the Landlords entered into the tenancy agreement on the basis that JS would be living in the rental unit two days a week until he became an adult but, even though he is now an adult, he continues to reside in the rental unit. Neither of the Tenants disputed that JS was an adult now. IL stated it was the Landlords position that the Tenants were in breach of a material term of the tenancy agreement. LS submitted a copy of the tenancy agreement and the addendum to it. LS stated that JS is a tenant on the tenancy agreement. LS stated there is no term in the tenancy agreement or the addendum stipulating JS may only live in the in the rental unit part-time or that he must vacate the rental unit when he became an adult. LS stated that the rental unit has two bedrooms. The Landlords did not dispute the rental unit had two bedrooms. *Residential Tenancy Branch Policy Guideline 8* provides guidance on, among other things, the meaning of a material term. PG 8 states:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

After the hearing, I reviewed the tenancy agreement and the addendum and I could not find any term that limits the number of occupants in the rental unit or requires the consent of the Landlord to any additional occupants or stipulates the JS could only live in the rental unit part-time or that JS was required to vacate the rental unit when he became an adult. I find the Tenants are not in violation of a material term of the tenancy

agreement as defined in PG 8. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsection 47(1)(h) of the Act.

The Landlords also asserted there are an unreasonable number of occupants in the rental unit. LS stated the rental unit contains two bedrooms. The Landlords did not dispute her testimony. I find that two people living in a two-bedroom rental unit is not an unreasonable number of occupants. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsection 47(1)(c) of the Act.

The Landlords also asserted that, as a result of continued occupation in the rental unit by JS who is now an adult, the Tenants have engaged in illegal activity that has adversely affected the quiet enjoyment and physical well-being of the Landlords and has adversely jeopardized a lawful right of the Landlords.

Residential Tenancy Policy Guideline 32 (“PG 13”) provides guidance on interpreting the meaning of the phrase “illegal activity. PG 13 states in part:

> The Meaning of Illegal Activity and What Would Constitute an Illegal Activity The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.
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> *The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*
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> In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.
>
> A breach of a provision of the Legislation may or may not constitute an illegal activity depending on the severity of the breach in respect of the criteria set out

> above. For example, not paying one's rent contravenes the Legislation. However, merely not paying rent in and of itself does not constitute an illegal activity. On the other hand, if the tenant went around the residential property harassing the landlord so that he or she could not collect the rent from other tenants, this might constitute illegal harassment and thus be an illegal activity which would warrant terminating the tenancy.
>
> Breaches of criminal statutes, if minor or technical, may not rise to the level of illegal activity under the Legislation. However, more serious breaches of the same statute may rise to that level. For example, a failure to obtain a business license to work at home, so long as this would otherwise not contravene the tenancy agreement, would not be an illegal activity warranting termination of the tenancy. On the other hand, running a brothel in the rental unit would be an illegal activity warranting termination of the tenancy.
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> [emphasis in italics added]

The Landlords did not submit a copy of the relevant federal or provincial statute or municipal bylaw setting out the illegal activities the Landlords allege the Tenants have committed. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsections 47(1)(e)(ii) and 47(1)(e)(iii) of the Act.

IL stated LL set a rat trap around the recycling container on the exterior of the residential property. IL stated LS did not want LL to set the traps in certain places. IL submitted into evidence an email dated April 3, 2022 from LS in which LS a request that the Landlords consider moving the rat trap behind the bin rather than front. Nowhere does the Tenant demand that the Landlords move or remove the rat trap. I find LS made a suggestion for the rat trap to be moved behind the garbage bin and was not a demand that would be considered seriously jeopardizing the lawful right or interest of the Landlords or another occupant of the residential property. I do not find LS' this request to have *seriously* jeopardized the lawful right or interest of the Landlords or another occupant of the residential property. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsections 47(1)(d)(ii) and 47(1)(d)(ii) of the Act.

IL stated that LS then placed a recycling bag on top of the rat trap to cover it. LL stated there are two basement suites, one in the north and one in the south, and the Tenants live in the south suite. LL stated the Tenants do not comply with the rules and the

Tenants do not comply with the rules. LL stated that on one occasion, he sent the Tenants a picture that showed the lid of the recycling container left half-way off the container after LS had used it. LL stated that it then rains and fills the recycling container with water. The Landlord allege that the Tenants are in breach of a material term and have interfered with the Landlords' lawful right or interest. The Landlords did not point to any provision of the tenancy agreement that requires the Tenants to properly place the lid on the recycling container. I do not find that, by not properly placing the lid on the recycling container, the Tenants have breached a material term of the tenancy agreement. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsections 47(h) of the Act.

IL stated it was a really cold winter with temperatures at -10 to -18 C and the Tenants would leave the heat on with the window open. IL stated the Landlords have explained to LS that the HVAC system is most effective when the windows are closed. LS stated she did not leave the windows open throughout the winter but may open them from time to time when she is home. The Tenant stated she contacted two HVAC companies to get their professional opinion. The Tenant stated two professionals indicated that an open window will not alter or change HAVAC equipment or settings. I reviewed the tenancy agreement and the addendum and I could not locate any term prohibits the Tenants from opening the windows to the rental unit. I find the Tenants are not in violation of a material term of the tenancy agreement as defined in PG 8. As such, I find the Landlords have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to section 47(1)(h) of the Act. I do note, however, that although a tenancy agreement may provide that a tenant is entitled to a service or facility, such as heat and electricity, a tenant does not have the right to use an unlimited amount of the service or facility. Where a tenant uses more electricity or heat than is normal, a landlord has the option of making an application for dispute resolution to seek compensation from the tenant for excessive use of the service of facility.

IL stated there are always complaints from LS about noise level from the Landlord's living area above her. IL stated the Landlords are unable to take showers or baths after 7 or 8 pm as the water noise disturbs the Tenant. IL submitted that the constant complaints from the Tenant were significantly interfering with or unreasonably disturbing the Landlords as well as jeopardizing the health and lawful right of the Landlords. The Landlord stated he has a heart condition that is exasperated by LS's complaints. The fact that a one of the Landlords has a pre-existing health condition and is more susceptible to the stresses of managing a rental unit, does not generally change the

standard that the landlord must demonstrate that the Tenant has significantly interfered with or unreasonably disturbed that Landlord or has seriously interfered with or likely to jeopardize the health or safety of that Landlord. Section 28 of the Act states:

> 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
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> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 28 prohibits other residents, and the landlord, from violating the tenant's right to quiet enjoyment of the rental unit. LS stated that the complaints she made about noise were promoted by excessive walking above her bedroom over the course of 10 days or so. The Landlords submitted several communications from LS in which she complained about noise and, in one of those communications reminded the Landlords about her schedule. Based on the testimony and evidence submitted at the hearing, I find LS was asserting the Tenants' right to seek quiet enjoyment of the rental unit and they have not *unreasonably* disturbed the Landlords by making complaints regarding noise from the living area above them. As such, I find I find the Landlord's have failed to establish in respect of these allegations, on a balance of probabilities, that there was cause to end the tenancy pursuant to subsections 47(1)(d)(i) or 47(1)(d)(ii) of the Act.

LS made an inquiry to the Elders of the Landlord's Christina congregation which has caused the Landlords serious distress. The Tenant stated she was desperate to get information regarding the 1 Month Notice and sought assistance from the Elders. Although the interactions between LS and the Elders may have involved slander or libel, they are not matters related to the tenancy that are regulated by the Act. As such, whether there is any liability on the part of LS to the Landlord in respect of the discussions between LS and the Elders is not a matter I have jurisdiction to consider.

Based on the foregoing, I find the Landlords have not proven, on a balance of probabilities, that there is cause to end the tenancy early pursuant to subsections 47(1)(c), 47(1)(d)(i), 47(1)(d)(ii), 47(1)(e)(ii), 47(1)(e)(iii) and 47(1)(h) of the Act. As

such, I allow the Application and order the 1 Month Notice cancelled. The tenancy continues until ended in accordance with the Act.

As the Tenants have been successful in the Application, I award the Tenants the filing fee of $100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to withhold $100.00 from their monthly rent on a one-time basis in satisfaction of this amount. The Landlords may not serve the Tenants with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenants make the $100.00 deduction from their rent.

The testimony and evidence submitted by the parties at the hearing suggests that the Landlords and Tenants are not maintaining appropriate boundaries in their communications with each other. Section 88 of the Act specifies the methods by which documents (including notices) are to be served by one party on another party to a tenancy agreement as follows:

> 88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
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> (a) by leaving a copy with the person;
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> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
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> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
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> (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
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> (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
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> (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;

(j) by any other means of service provided for in the regulations.

Service by one party by another party with documents or notices by texting is not a recognized method of service by section 88. One party only may serve another party with documents by email if the receiving party has consented, in writing, to service of documents by email. Accordingly, service of a noise complaint, or a request for general repairs, by the Tenants by email does not meet the service requirements of section 88 of the Act unless the Landlords have previously provided their written consent to the Tenants for service of documents by email. Furthermore, the Act only contemplates that a tenant may telephone a landlord when emergency repairs are required. Subsections 33(1) through 33(3) state:

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

(c) 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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

A landlord has the option of requesting, in writing, that the tenant only communicates with him or her by telephone in the event of the need for emergency repairs and, in all other instances, such as a request for general repairs or complaints regarding excessive, to communicate to the landlord in writing and serve them in accordance with the provisions of section 88 of the Act. The repeated failure of a tenant to comply with such request may give the landlord cause to end a tenancy pursuant to a One Month Notice for Cause on the basis that the tenant has significantly interfered with or unreasonably disturbed the landlord. I would recommend the Landlords and Tenants follow the requirements of the Act so as to make this a successful tenancy.

I also recommend the parties review the provisions of *Residential Tenancy Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises, Residential Tenancy Policy Guideline 7 – Locks and Access, Residential Tenancy Policy Guideline 8 - Unconscionable and Material Terms* and *Residential Tenancy Policy Guideline 6 – Entitlement to Quiet Enjoyment.*

Conclusion

I allow the Application to cancel the 1 Month Notice. The tenancy continues until ended in accordance with the Act.

As the Tenants have been successful in the Application, I award the Tenants the filing fee of $100.00 for the Application. Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to withhold this amount on a one-time basis from their monthly rent on a one-time basis in satisfaction of this amount.

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: July 18, 2022

Residential Tenancy Branch