Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310065453: CNC, MNDCT, RR, RP, LAT, OLC, FFT
File #910070603: OPC, MNDL-S, MNDCL-S, FFL

Introduction

The Tenants apply for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 70 restricting the Landlord's access to the rental unit;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, tenancy agreement, and/or the Regulations;
- an order pursuant to s. 67 for monetary compensation for loss or other money owed;
- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on February 26, 2022 (the "February One-Month Notice");
- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on April 15, 2022 (the "April One-Month Notice"); and
- an order pursuant to s. 72 for return of their filing fee.

The Landlord files a cross-application seeking the following relief under the *Act*:

- an order for possession pursuant to s. 55 after issuing the February One-Month Notice;
- an order for possession pursuant to s. 55 after issuing the April One-Month Notice;
- an order pursuant to s. 67 for monetary compensation for loss or other money owed;
- an order pursuant to s. 67 for monetary compensation due to damages to the rental unit; and

- an order pursuant to s. 72 for return of their filing fee.

The matter was originally scheduled for hearing on June 23, 2022 but was adjourned due to there being insufficient time to complete submissions.

J.W. appeared as the Tenant and was joined by A.B. N.J. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord testified that he personally served the Tenant with the February One-Month Notice on February 26, 2022 and the April One-Month Notice on April 15, 2022. The Tenant acknowledged receipt of both as alleged. Based on their acknowledged receipt, I find that both notices to end tenancy were served in accordance with s. 88 of the *Act* and received on February 26, 2022 and April 15, 2022.

The parties acknowledge the receipt of the other's application materials, though the Landlord disputed the service of a second evidence package served by the Tenant. As noted in my interim reasons, I found that those documents were served and would be included and considered by me. Based on the acknowledged receipt of the application materials and having found in favour of the Tenant regarding service of the second evidence package, I find that pursuant to s. 71(2) of the *Act* the parties' application materials were sufficiently served on each other, excepting some digital evidence provided by the Tenants which I will explain below.

Preliminary Issue – Claims advanced in the applications

Both parties seek broad and wide-ranging relief in their applications. Rule 2.3 of the Rules of Procedure requires that claims in an application be related to one another. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

The primary issue in both applications relate to the enforceability of the February One-Month Notice and the April One-Month Notice. The other aspects of the applications are

not related to the issues involved with determining whether either notice to end tenancy is enforceable. Further, some of the relief claimed by the Tenant, namely the request for a rent reduction, repairs, authorization to change the locks, and that the Landlord comply with the *Act* are only relevant should the tenancy continue. They are secondary to the dispute regarding the enforceability of the notices to end tenancy.

With respect to the Landlord's application, I dismiss his claims for monetary compensation under s. 67 of the *Act* with leave to reapply. With respect to the Tenant's application, I dismiss their claims for monetary compensation with leave to reapply. Pending the determination with respect to the enforceability of the notices to end tenancy, the remainder of the Tenant's claims may be dismissed with or without leave to reapply.

Preliminary Issue – Additional Evidence, Correction, and Amendment from the Landlord

In my interim reasons, I outlined my findings with respect to the admissibility of additional evidence provided by the Tenant, which I will not repeat here. The Landlord provided a letter seeking correction of the interim reasons. I did not provide a correction, nor do I do so presently, because the Landlord's submissions are not a bona fide request for correction under s. 78 of the *Act* and are an attempt to reargue his position. My findings and reasons with respect to the service of the additional evidence are clear in my interim reasons.

I do wish to clarify a point with respect to the service of digital evidence by the Tenant, which the Landlord denies receiving. The Tenant did provide some digital evidence to the Residential Tenancy Branch. However, that evidence is not related to enforceability of the February and April One-Month Notices, pertaining instead to aspects of the application that were severed. As they are not related, they are not relevant and will not be considered by me in any event. I make no findings with respect to their service as the issue is not relevant.

Further, I made clear direction to both parties in my interim reasons that no additional evidence be served or submitted. Despite this, the Landlord has provided additional evidence to the Residential Tenancy Branch. At the reconvened hearing, the Landlord did not raise the issue with respect to the admissibility of this additional evidence. My directions were clear with respect to the service of additional evidence. They were given as the hearing had commenced and submissions had been made on the substantive issues in dispute. The adjournment period is not an opportunity to reinforce your

position with additional documents. Such an approach would be improper and procedurally unfair. I wish to note that the Landlord has provided some 90 pages of documentary evidence in advance of the June 23, 2022 hearing, which have been included and will be considered by me.

The Landlord further provided an amendment to their claim to the Residential Tenancy Branch, which is signed on October 5, 2022. At the hearing, the Landlord did not provide submissions with respect to the amendment or whether it was served. I have reviewed the amendment form and it seeks to add or alter an additional monetary claim. To be clear, regardless of whether the amendment was served, I am not permitting it as it is not sufficiently related to the issue of the enforcement of either notice to end tenancy. Again, the hearing had already started and it is improper, in my view, to permit an amendment adding an additional claim in any event.

Issues to be Decided

1) Should the February One-Month Notice be cancelled?
2) Should the April One-Month Notice be cancelled?
3) Is the Landlord entitled to an order of possession?
4) Is either party entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

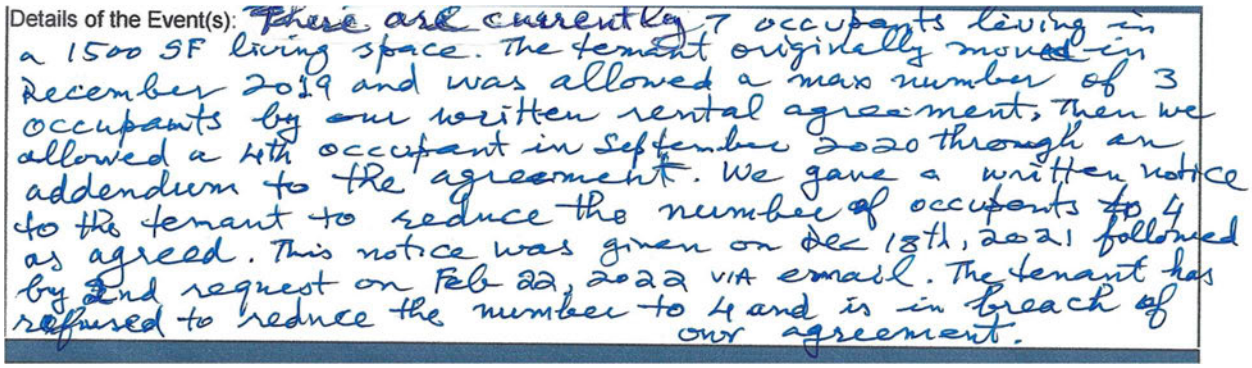
The parties confirmed the following details with respect to the tenancy:

- The tenancy began on December 1, 2019.
- Rent of $2,588.00 is due on the first day of each month.
- The Tenant paid a security deposit of $1,225.00 and a pet damage deposit of $1,225.00 to the Landlord.

I have been provided with a copy of the tenancy agreement which was signed by the parties on October 27, 2019.

The Landlord indicates that the February One-Month Notice was issued on the basis that the Tenant had too many occupants within the rental unit. I have been provided a copy of the February One-Month Notice, which indicates it was issued on the basis of there being an unreasonable number of occupants and that the Tenant has breached a material term of the tenancy agreement and failed to correct it within a reasonable time after being provided written notice to do so.

In the February One-Month Notice, the Landlord provides the following description with respect to the circumstances in which the notice was given:


Details of the Event(s): There are currently 7 occupants living in a 1500 SF living space. The tenant originally moved in December 2019 and was allowed a max number of 3 occupants by our written rental agreement, then we allowed a 4th occupant in September 2020 through an addendum to the agreement. We gave a written notice to the tenant to reduce the number of occupants to 4 as agreed. This notice was given on Dec 18th, 2021 followed by 2nd request on Feb 22, 2022 via email. The tenant has refused to reduce the number to 4 and is in breach of our agreement.

I was referred to clause 6 of the tenancy agreement, which specifies that three individuals, J.W., A.B., and C.B., could occupy the rental unit. The Landlord testified that this was altered in November 2020 such that a fourth occupant was permitted to live at the rental unit in exchange for a rent increase of $100.00 per month. I was directed by the Landlord to an addendum to the tenancy agreement put into evidence by the Landlord dated November 1, 2020 signed by the Tenant respecting the additional occupant.

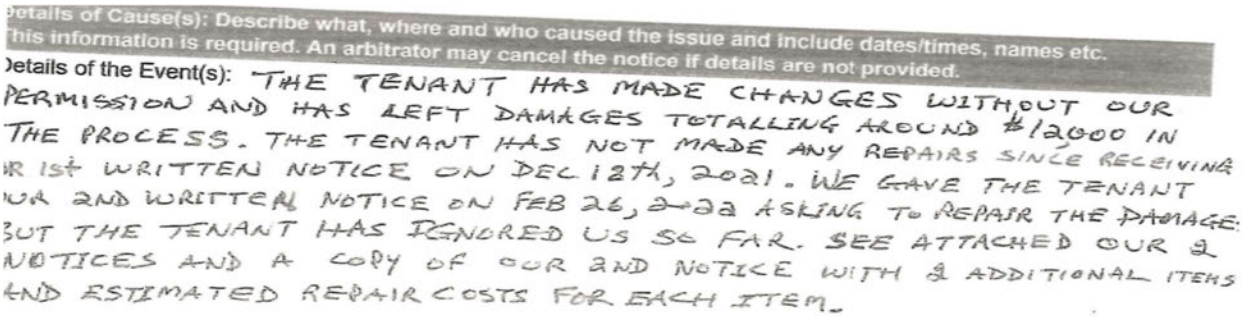
I was further referred to a letter December 18, 2021 from the Landlord to the Tenant put into evidence by the Landlord. The December 18, 2021 letter lists various issues, though specifies that there were too many occupants, that it had to be reduced to 4 occupants, and that Tenant had until January 15, 2022 to correct this issue.

The Tenant and A.B. acknowledge that the individuals moved into the rental unit in November or December 2021, though argued that the couple had two children, one of which was a newborn, such that the number of individuals was not an issue. The Tenant argued that the family was living at the rental unit temporarily and moved-out in April or May 2022. The Tenant further indicates that his brother moved into the rental unit in the spring of 2022 following the death of their father and that he needed to assist in the

administration of the estate. The Tenant's written submissions indicate the house is 3000 square feet, a point that is confirmed in an email from the Landlord dated February 26, 2022 provided to me in the Tenant's evidence.

The Tenant further testified that he and the Landlord attempted to renegotiate the tenancy agreement to permit the additional occupants and that the Landlord asked for an additional amount of rent per occupant. The Tenant's evidence includes a copy of an email from the Landlord dated February 22, 2022 in which an additional two occupants would be permitted for an additional rent payment of $400.00 per month.

The Landlord further indicates that the April One-Month Notice was issued based on a series of repair issues. I have been provided with a copy of the April One-Month Notice, which indicates it was issued on the basis that the Tenant has not done required repairs of damage to the rental unit, and provides the following description:


Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc.
This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s): THE TENANT HAS MADE CHANGES WITHOUT OUR PERMISSION AND HAS LEFT DAMAGES TOTALLING AROUND $12,000 IN THE PROCESS. THE TENANT HAS NOT MADE ANY REPAIRS SINCE RECEIVING IR 1st WRITTEN NOTICE ON DEC 12TH, 2021. WE GAVE THE TENANT UR 2ND WRITTEN NOTICE ON FEB 26, 2022 ASKING TO REPAIR THE DAMAGE: BUT THE TENANT HAS IGNORED US SO FAR. SEE ATTACHED OUR 2 NOTICES AND A COPY OF OUR 2ND NOTICE WITH 2 ADDITIONAL ITEMS AND ESTIMATED REPAIR COSTS FOR EACH ITEM.

The Landlord referred me to a letter dated February 26, 2022 in his evidence which he provided to the Tenant regarding the various repair issues. I reproduce the issues raised by the Landlord in the February 26, 2022 letter:

1) Plant trees & shrubbery in the back yard and remove your tool shed, trailer and large van from the back of the property because you cleared the rear forest area to create additional parking space for more vehicles without our permission. See line 5 of the original rental agreement.

2) Remove all of your items from our wooden tool storage shed behind the garage. As you know this shed is not part of this tenancy.

3) Scrap off all the mud from the entire driveway and install a minimum 3" bed of new gravel all over the driveway to restore the driveway prior condition because your roommate has caused mud all over our gravel driveway with his off road vehicle , especially on the area in front of the garage doors with his off road vehicle.

4) Remove 2 of the 6 vehicles currently parked all over the property. See line 9 of the original rental agreement.

5) Paint the garage door white as agreed originally. See text history.

6) Replace the 2 doors with square vents with our doors in the basement as requested in our letter dated December 18 , 2021 (item 3). See line 5 of the original rental agreement.

7) Repaint the 2 bedroom floors properly as requested in our letter dated December 18, 2021.(item 4)

8) Finish the ensuite washroom floor threshold and wall base and replace dented sink faucet as requested in our letter dated December 18, 2021 (item 5)

9) Replace that tub surround at your expense because you agreed to do that in writing BEFORE this tenancy started. See line 2 of the hand written agreement.

10) Finish main washroom floor tiles around the new toilet base properly with matching ones because you installed this toilet with a smaller base on you own without my permission & left damage for me.

11) Reinstall all bedroom closet doors that are currently sitting in the basement.

The Landlord testified that the Tenant cut trees along the property line in March 2020 to park a trailer and build a shed. The Landlord says he raised issue with respect to the extent of the amount cleared in 2020 but that nothing was done by the Tenant. The Landlord further complained that the work changed the grade and caused water drainage issues for the house.

The Tenant says that the area was cleared was overgrown bramble and that he asked the Landlord about clearing it out prior to undertaking the work. The Tenant says that the Landlord was happy with the work. The Tenant's evidence includes an email dated March 27, 2020 from the Landlord which states the following:

> [Tenant] ,
>
> I had no idea that the backyard will be cleared to this extent. Looks not bad though. You will have more grass to cut now!
>
> As always, I need to know the full plan & approve it before you start on any thing no matter how small it is.
>
> Cheers

I have redacted personal identifying information from the email in the reproduction.

The Tenant further testified that the trailer had been parked on the property at the outset of the tenancy and that the Landlord had agreed to shed going up on the understanding it would be removed at the end of the tenancy. The Landlord denies any oral agreement.

The Landlord testified that the Tenant had stored some of his personal belongings in a shed that did not form part of the tenancy. The Tenant acknowledges this and testifies that he has rectified the issue.

The Landlord indicates that the Tenant friend's brought excessive mud onto the driveway, which he asked the Tenant to correct. The Tenant argued that the request for additional gravel was unreasonable, specified that the mud resulted from the atmospheric river in the fall of 2021, and that it did not make sense to clean the driveway in the winter months. The Tenant testified that mud has since been cleared from the driveway.

The Landlord further testified that there were 6 vehicles on the property whereas the tenancy agreement limits the amount of vehicles to 4. The Tenant argued that all the vehicles are insured and that there was sufficient space for parking them. The Tenant further argued that the Landlord requested two of them be parked at the property to make it seem like it was occupied.

The Landlord testified that a door on the garage had been replaced by the Tenant, who said that he would paint it. The Landlord indicates that the Tenant failed to do so. The Tenant testified that he has.

The Landlord indicates that two of the interior doors were damaged by the Tenant. The Tenant denies this saying that he removed the original doors as they were broken. The Tenant further argues that the original doors are currently stored and will be put back up at the end of the tenancy.

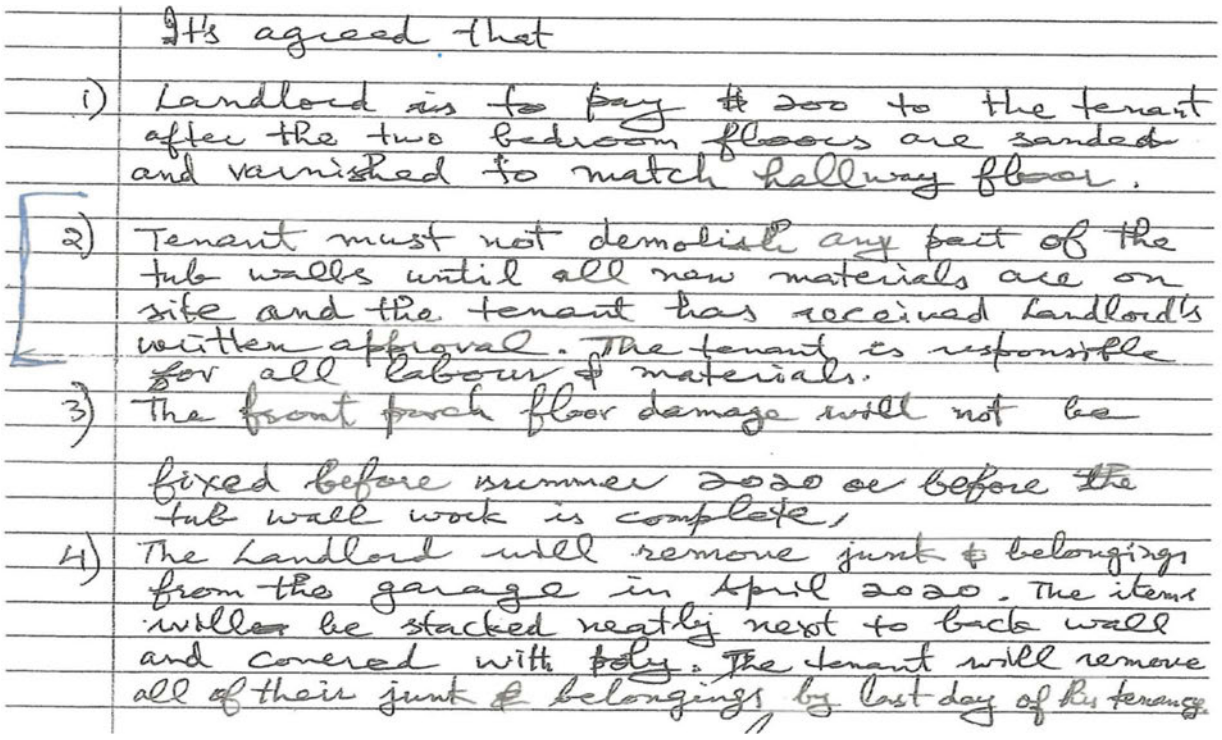
The Landlord also indicated that the flooring in two rooms was sanded by the Tenant, which he says was painted by the Tenant rather than being varnished as had been agreed. The Tenant testified that the flooring at the outset of the tenancy were in bad shape and to make it liveable he removed the carpet and repaired the flooring. In any event, the Tenant says that the work has been completed.

The Landlord further testified that the Tenant had not replaced a faucet in the bathroom as he had agreed to. The Tenant testified that he did reinstall the baseboards but that the faucet was not replaced as the Landlord had agreed to replace it and then later denied agreeing to doing so. The Tenant argued that this type of work is not typically the responsibility of a tenant.

The Landlord testified that the Tenant had agreed to undertake certain repairs to the bathroom on the condition that he was to pay less rent. This is denied by the Tenant and that repairing the bathroom is not his responsibility. The Tenant further testified that he paid rent in the amount advertised by the Landlord at the outset of the tenancy.

Finally, the Landlord indicates that the Tenant had taken off some closet doors without his consent and did so without his permission. In the Tenant's telling, he testified that the closet doors were in a poor state of repair and that he removed the closed doors such that the closets could be used.

Both parties referred me to a document dated October 27, 2019, which was put into evidence by the Landlord. The document comprises terms of an agreement between the parties, which the document describes as being an addendum to the original agreement dated October 27, 2019. I reproduce its terms below:



It's agreed that

1) Landlord is to pay $ 200 to the tenant after the two bedroom floors are sanded and varnished to match hallway floor.

2) Tenant must not demolish any part of the tub walls until all new materials are on site and the tenant has received Landlord's written approval. The tenant is responsible for all labour & materials.

3) The front porch floor damage will not be fixed before summer 2020 or before the tub wall work is complete,

4) The Landlord will remove junk & belongings from the garage in April 2020. The items will be stacked neatly next to back wall and covered with poly. The tenant will remove all of their junk & belongings by last day of his tenancy.

In general, the Landlord argued that the Tenant did as he pleased with respect to the property and that he did not ask for permission beforehand. The Tenant argued that many of the issues raised by the Landlord are not related to the tenancy.

The Tenant continues to reside within the rental unit.

Analysis

The Tenant seeks an order cancelling the notices to end tenancy. The Landlord seeks an order of possession pursuant to the same notices.

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. Under the present circumstances, the Landlord issued the two notices to end tenancy pursuant to ss. 47(1)(c) (unreasonable number of occupants), 47(1)(g) (failure to repair damage within a reasonable time), and 47(1)(h) (breach of a material term). Upon receipt of a notice to end tenancy issued under s. 47, a tenant has 10 days to dispute the notice. If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the landlord.

As per s. 47(3) of the *Act*, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the February One-Month Notice and the April One-Month Notice and find that they comply with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and are in the approved form (RTB-33).

The Tenant filed to dispute the February One-Month Notice on March 7, 2022 and, by amendment to his claim, filed to dispute the April One-Month Notice on April 25, 2022. Given the February One-Month Notice was received on February 26, 2022 and the April One-Month Notice was received on April 15, 2022, I find that the Tenant filed his application disputing the notices within the 10-day window imposed by s. 47(4) of the *Act*.

Dealing first with the arguments related to the number of occupants, the February One-Month Notice characterizes the issue as one of there being an unreasonable number of occupants and a breach of a material term of the tenancy agreement. There is no dispute that the tenancy agreement, by addendum, permitted 4 occupants, including the

Tenant. There is further no dispute that there were 7 occupants in the rental unit and some point in the spring of 2022.

Looking first on whether there were an unreasonable number of occupants, I note that the February One-Month Notice indicates that the rental unit is 1500 square feet, though the Tenant's evidence, including an email from the Landlord dated February 26, 2022, indicate that the rental unit is 3000 square feet. I was provided no submissions by the Landlord with respect to the number of rooms in the rental unit, which would be helpful insofar as determining what is a reasonable number of occupants given the square footage of the rental unit.

I find that I have insufficient evidence to make a finding that the 7 occupants alleged is an unreasonable number of occupants for the space. I note that the Landlord attempted to negotiate higher rent based on the additional occupants, which would undermine the argument that there were an unreasonable number of occupants for the rental unit as the issue was not about space and more about extracting additional rent from the Tenant.

Viewing the issue of a breach of a material term, policy Guideline #8 provides the following guidance with respect to material terms of a tenancy agreement:

> **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.

Section 47(1)(h) of the *Act* makes specific reference to "material term" rather merely a term of the tenancy agreement because, in contract law, a breach of a material term renders a contract voidable. The materiality of the breached term is essential because a basic breach of a contract may only give rise to a claim for damages.

In this instance, the Landlord has provided no submissions with respect to the materiality of clause 6 of the tenancy agreement. On the absence of evidence and submissions on this point, I would dismiss this basis of the February One-Month Notice altogether. I would further note that I question the materiality of clause 6. The Landlord has clearly demonstrated a flexibility to amending the term, having done so in November 2020 and attempting to do so in February 2022. It can hardly be said that clause 6, or even the November 2020 amendment, could be considered material to the tenancy given the flexible approach taken by the parties in its renegotiation over the years.

I find that the Landlord has failed to demonstrate that the February One-Month Notice was properly issued. Accordingly, I grant the Tenant's application and cancel this notice. Correspondingly, I dismiss the Landlord's application for an order of possession pursuant to the February One-Month Notice.

Looking next at the April One-Month Notice, the Landlord alleges that the Tenant failed to repair certain items at the property and issued the notice under s. 47(1)(g) of the *Act*, which 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:
> …
> (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

There is an unusual aspect to the present tenancy. The Tenant testified that the rental unit was in a poor state of repair at the outset of the tenancy, which the Landlord denies. However, the purported addendum to the tenancy agreement dated October 27,

2019 contains items clearly demonstrates that there were at least some repair issues present when the tenancy began. The tenancy agreement itself, at clause 5, states that the “Tenants agree to accept the premises “as is” having already inspected.” It is highly unusual for a landlord to include a clause within their tenancy agreement that a rental unit be taken “as is”. Further, the October 27, 2019 agreement, specifically clause 1 and 2, essentially download repair issues, which generally fall on landlords, onto the Tenant. It is difficult to conceive why a Tenant would be obligated to renovate a bathroom or sand flooring at the outset of a tenancy. All of this is to say that it appears more likely than not that the rental unit was in a poor state of repair at the outset of the tenancy.

Looking at the items listed in the February 26, 2022, many would generally fall within the ambit of a landlord’s responsibility to maintain and repair the property under s. 32(1) of the *Act*. After hearing the parties’ submissions and review of the October 27, 2019 agreement, it is apparent that the Landlord and Tenant had a business-like relationship whereby they agreed that the Tenant would undertake certain repairs at the property on behalf of the Landlord.

This private business relationship cannot be incorporated with or form part of the tenancy. It is highly inappropriate, in my view, to contract with a tenant to renovate a bathroom in the rental unit and then threaten eviction to that tenant when you become dissatisfied with that work. Such an interpretation would run contrary to the intent of the *Act*, which is to regulate residential tenancies by providing rights to tenants that do not exist at common law. Such aspects may exist in commercial tenancies, not residential tenancies. I find that the parties private business arrangement is outside the scope of the landlord-tenant relationship and is outside the jurisdiction of the *Act*.

The February 26, 2022 letter indicates at item 1 that the Tenant cleared a forested area without the Landlord’s consent. I find that this allegation is disingenuous as the email of March 27, 2020 clearly demonstrates the Landlord was aware the area would be cleared, implying he consented to the Tenant doing so. Further, it is incongruous for the Landlord, knowing and consenting to the area being cleared in the spring of 2020, to then take issue with what occurred some two years afterwards. There is a line being crossed by the Landlord with respect to repair and maintenance he should have either undertaken himself or not agreed for the Tenant to undertake on his behalf. I find that this issue falls within the parties private business relationship and it outside the scope of their landlord-tenant relationship.

Item 2 of the February 26, 2022 letter pertaining to the removal of items from a shed belonging to the Landlord is not a repair issue that would fall within the ambit of s. 32(3) of the *Act*. In any event, the Tenant indicates and I accept that he has since removed the items. I find that this is not a proper ground for ending the tenancy.

With respect to the driveway, I take note that there was heavy rain in November 2021, which caused significant flooding in many areas of BC. The Landlord alleges the mud was caused by the Tenant. I disagree. There is no evidence to suggest that the Tenant or the other occupants tore up the driveway. The fact that additional mud is either brought onto the driveway or driven upwards due to inclement weather falls within the normal use of a driveway. It is normal wear and tear which the Tenant is not responsible to repair. In any event, the Tenant indicates that he has cleaned the driveway after the winter months had passed.

Item 4 of the February 26, 2022 letter respecting the number of vehicles parked at the property is not a repair issue under s. 32(3) of the *Act*. This was not flagged by the Landlord as a breach of a material term of the tenancy agreement either. Had it been, I would find that the Landlord has failed to demonstrate that clause 9 of the tenancy agreement is material to the contract as he adduced no evidence on this point at the hearing.

Items 5, 7, 8, 9, and 10 of the February 26, 2022 letter are not repair issues for which the Tenant is responsible under s. 32(3) of the *Act*. This touches upon the party's business-like relationship, which falls outside the scope of the *Act*.

Finally, items 6 and 11 of the of the February 26, 2022 letter involve disputes regarding damage to doors and reinstallation of closet doors. The Tenant alleges that the doors in question were damaged at the outset of the tenancy and taken down. I accept the Tenant's evidence that the rental unit was in a state of disrepair at the outset of the tenancy. I further accept that the Landlord ought to have repaired these issues himself but did not, which prompted the Tenant to remove the broken closet doors and replace the other doors to make use of the rental unit. I find that this is not a repair issue for which the Tenant is responsible.

I find that the Landlord has failed to establish that the Tenant, as part of the tenancy, was responsible to repair any of the items listed in the February 26, 2022 letter, which comprised the basis for issuing the April One-Month Notice. Accordingly, I grant the

Tenants application to dismiss the April One-Month Notice and correspondingly dismiss the Landlord's application for an order of possession pursuant to that notice.

Conclusion

The February One-Month Notice and April One-Month Notice are hereby cancelled and are of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord's application for an order of possession is dismissed without leave to reapply.

Those aspects of the parties' applications that were severed under Rule 2.3 of the Rules of Procedure are dismissed with leave to reapply.

I find that the Tenant was successful in his application and is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's $100.00 filing fee. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold $100.00 from rent payable to the Landlord on **one occasion** in full satisfaction of his filing fee.

I find that the Landlord was unsuccessful in his application. His claim for the return of his filing fee under s. 72(1) of the *Act* is dismissed without 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: November 02, 2022

Residential Tenancy Branch