Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RP, PSF, OLC, FFT

Introduction

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

- an order that the Landlords make repairs to the rental unit pursuant to section 32;
- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the Landlords provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $100.00 pursuant to section 67;
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The hearing of the Tenant's Application was scheduled for teleconference at 9:30 a.m. on December 20, 2022. Both parties called into the hearing. The Tenant, KR, called in on her own behalf as did the Landlord, NK. LA attended the hearing as a witness for the Landlord. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*"). Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The Tenant testified she served the Landlord with the notice of dispute resolution proceedings (the "NDRP") and supporting evidence package via registered mail on October 22, 2022. The Tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The Landlord confirmed receipt of the NDRP and evidence via registered mail. The Landlord was unsure of the date he received the registered mail. I find that the Landlord was deemed served with this package on October 27, 2022, five days after the Tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

The Landlord personally served the Tenant with his evidence on December 4, 2022 at 10:45 a.m. The Tenant confirmed receipt of the Landlord's evidence.

Preliminary Issue #1: Tenant's Application

The Tenant applied for various and wide-ranging relief. Pursuant to *Rule 2.3* of the *Rules*, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

Hearings before the Residential Tenancy Branch are general scheduled for one-hour and *Rule 2.3* is intended to ensure that we are able to address disputes in a timely and efficient manner.

Upon review of the Tenant's Application, I find that the primary issue is whether the tenancy will continue or end pursuant to the One Month Notice for Cause (the "Notice") to end tenancy that is subject to the application. Some of the additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to *Rule 2.3* of the *Rules*, I dismiss the Tenant's following claims with leave to reapply:

- an order that the Landlords make repairs to the rental unit pursuant to section 32;
- an order requiring the Landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the Landlords provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $100.00 pursuant to section 67;

The hearing proceeded on the issue tied to the notice to end tenancy signed September 30, 2022.

Preliminary Issue #2: Landlord's Hearing

The Landlord was difficult to hear through part of the conference call as he used a speaker phone and his voice would fade in and out depending on how close to the speaker phone he was positioned. I asked the Landlord if there was a problem with the phone connection and if he needed to disconnect and re-dial into the conference call. The Landlord explained that he is 79 years of age and hard of hearing so keeps the phone on speaker at high volume. At the start of the hearing, I asked the Landlord to repeat his testimony several times. The Landlord did not want to adjourn. The issue was resolved and the Landlord was able to fully participate in the hearing. The hearing proceeded on the issue tied to the notice to end tenancy.

Issues to be Decided

Is the Tenant entitled to:

1) an order cancelling the Notice; and
2) recover the filing fee?

If the Tenant fails in her application, is the Landlord entitled to:

1) 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 two (2) written fixed term tenancy agreements. The original tenancy agreement started February 1, 2015 ending January 31, 2016 and listed two (2) tenants, K (no last name listed) and MJVS. When MJVS moved out of the rental unit, KR and NK signed a new fixed term tenancy agreement starting May 1, 2015 and ending April 30, 2016 converting to a periodic month-to-month tenancy thereafter. Monthly rent is $1731.18 and is payable on the first of each month. The Tenant paid the Landlord a security deposit of $750.00. The Landlord still retains this deposit.

The One Month Notice was served to the Tenant on September 30, 2022. The Landlord's wife taped the Notice to the Tenant's door. The Tenant confirmed receiving the Notice on September 30, 2022.

The reasons for serving the Notice are identified as follows:

> Tenant or a person permitted on the property by the Tenant has (check all boxes that apply)
>
> - 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.
>
> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under "Details" the Landlord writes:

> Over the past years, multiple altercations with adjacent neighbours and the Tenant in the basement suite have occurred. We regularly receive complaints from Tenants at XXX XXX Street and the Tenants living in the basement at the subject property. We gave you a Notice, dated September 13, 2022 and asked for this type of behavior to stop, however it continues to be a constant problem. As recently as September 29th, you had your TV on an extremely high volume past 12:30 am disturbing the Tenants in the basement who have to work in the morning (one of whom is elderly and takes medication). When they asked you to turn the volume down you refused. Everyone in the building has a right to quiet enjoyment but this has gone on for far too long. Refer to attached letters from neighbour and Tenant for reference to several incidents.

The Landlord testified that he owns two rental properties side by side. The witness, LA, lives in the neighboring rental property and the Tenant, KR resides in the subject rental property. The residential property KR lives in has an upstairs and a basement rental unit. KR lives in the main (upstairs) rental unit

and the basement rental unit is occupied by other Tenants. The basement rental unit Tenants have rented for about one (1) year.

The Landlord testified that at the start of the tenancy in 2015, the Tenant was told that the (upper) main rental unit was assigned the front yard and parking in the front of the residential property and the basement rental unit assigned the backyard, with parking in the lane. The yards were so assigned because Tenants occupying the basement rental unit can only access the basement suite from the back of the property.

KR, for some reason, occupied both the front and back yard restricting the basement rental unit Tenants access to the yard. KR persists in using the backyard as her personal space despite multiple conversations with the Landlord about this issue. The Landlord referred to photos of the front and back yard, KR's parking location at the front of the residential property, and the garbage KR left in the back yard despite being asked multiple times to dispose of it. KR was told not store fertilizer containers near the basement rental unit's windows because of the noxious smell but continues to do so. The Landlord provided no written evidence confirming yard assignment or documented warnings to the Tenant prohibiting her from using the backyard or for any of the other alleged issues.

The Landlord also stated that there is a garage on the residential property for his personal use and did not form part of KR's tenancy agreement. A few years ago, the Tenant asked the Landlord if she could store her lawnmower in the garage, which he agreed to. He told KR he only had one key, which he would lend her on condition she would return it after making a duplicate. She promised to do so but then refused to give back the original key to the Landlord, refused him access to the garage, and took over the entire garage as her personal space.

Without the Landlord's permission, KR installed a gate on the shared approach to the lane between the neighboring property and KR's rental property, obstructing access and egress to the lane for both the basement rental unit Tenants and the next-door neighbor.

KR planted blackberry bushes on the border between the neighbor's property and her rental property. The brambles are overtaking LA's yard. When the Landlord trimmed back the blackberry brambles on the neighboring property, KR came out of the rental unit and yelled at him to 'leave her plants alone'. The Landlord pointed out that he was on LA's property - that he had forbid KR to plant blackberries because they are invasive plants, but she did so anyway- and he could trim the blackberry brambles as he owned both properties.

The Landlord states that since KR moved into the main rental unit, the basement rental unit has seen four (4) separate sets of Tenants. The Landlord testified that exit interviews with the three (3) Tenants confirmed the reason they gave notice to move was because of KR, the upstairs Tenant. The Tenants allegedly described KR as "making their lives a living hell". The former Tenants did not want to complain to the Landlord because they "were scared of her". The Landlord states that KR is jeopardizing his ability to retain renters.

The current basement rental unit Tenants complained to the Landlord that KR was restricting access to their backyard prohibiting them from placing patio furniture in the yard. They allege KR turned off their water in retaliation for the Tenants' inability to reset a breaker restoring power to KR's bathroom. The

Landlord provided no documentary evidence confirming when the downstairs rental unit Tenants first complained and/or evidence of ongoing similar complaints.

The Landlord submitted an email called "Tenant Complaint Form" from the downstairs Tenants that provides as follows:

> My complaint is about the Tenant renting the unit upstairs. We have been renting the basement unit for over a year now and she has made our lives a living hell. She does not let us cut the gras in the backyard because she does not like it. We are not allowed to put anything in the backyard because she starts to complain that theirs no room, she wants to take over everything know that we both pay rent. We kindly have asked her over the months for some space in the backyard because we want to put our patio furniture and have family over but it seems that we can't because she's notable to give us some space even tho there room for both her stuff and ours. On July 2, 2022, the lights on her bathroom went out and we tried to turn it on and fix it on the panel but it didn't work, we told her to contact [N] who is the Landlord and tell him to come to check it out because when we tried fixing it smoked started to come out and we did not want to keep touching it. She proceeded with turning off the water for the basement for over 4hrs because we weren't able to fix the lights. I asked her kindly to turn the water back on since it was necessary and she started to act out and insult us. Over a month ago she insulted our neighbour and threatened her with killing her simply because our neighbour moved her hose which was getting water all over her when she tried walking on her side of the house. I believe the police were called for that incident. On September 7 she put a pot full of honey near our door. The pot started to be filled with bees and we could not go out because the pot was right by the door I txt her to ask her if she can move the pot and she simply said that it was just bees. We had to move the pot away and once she notices she got mad and asked why we did it. Every night around 8Pm she turns on her hoses witch are filled with holes and spray water near on of our windows we can't open the window because the water would go in, the neighbor's can't walk in their pathway because the hose is spraying water on them. When the hose is turn on sometimes the water leakes into our doors and we've noticed [N] about it and he told us not to turn it on now since it's alwys winter but shes asking telling us that we should leave them on, I've told her that water leakes but she does not seemed to concerned about it. She recently has put 3 wodden grates near the back entrance which we can go in without getting hit and we can't move them because she comes out screaming and telling us not to touch it. We have been dealing with her for over a year and we have talked to [N] but it seems that every time he tries to talk to her she screams at him and insults him. I hope with the Tenant complaint form we can come u with a solution. [reproduced as written]

The downstairs Tenants were out of town and unavailable to testify in person at the hearing. The Landlord submitted no sworn affidavits from these Tenants into evidence.

The Landlord testified he repeatedly told KR to call him immediately if there were any maintenance issues. KR did not inform him of the electrical problem in her bathroom. This resulted in the Landlord incurring a repair bill of over $2000.00 as two different electricians were required to fix the problem.

The Landlord submitted that the Tenant and the next-door neighbor have had ongoing disputes spanning several years. The downstairs Tenants alleged that KR's behavior is aggressive and insulting and have witnessed said behavior not only directed at them but toward the Landlord and the next-door neighbors. The Landlord testified that KR yells and screams at him whenever he is on the residential properties no matter why he is on the property. The Landlord states he does not need to notify KR when he is on the property visiting other Tenants.

On September 13, 2022 the Landlord issued a warning letter to KR about complaints received by and related to the ongoing conflict with the next-door neighbor, LA. The letter reads:

> It has come to our attention that several incidents have occurred between yourself and the neighbour residing at XXXX XXX Street (Ms. LA) over this past year. Some of the allegations made against you are summarized below:
>
> 1. Regular watering of plants/shrubs for several hours on end causing flooding onto the neighbouring property.
> 2. Trespassing onto the neighbouring property.
> 3. Impeding the walkway with plants/pots.
> 4. Uttering threats against the neighbour.
>
> If any of the allegations above are true, we would ask that you please stop this behavior and try to manage any future confrontations in a respectful manner. If this type of behaviour continues, you will be given a notice to end this tenancy. If you would lie to discuss this matter, please call me at my number below.

The warning letter was delivered by the Landlord in person to KR's mailbox.

On September 29, 2022, the Landlord testified he received a call "in the middle of the night" from the basement rental unit Tenants complaining that KR's TV was "too loud" and was keeping them up. The Landlord tried to call the Tenant to ask her to turn her music down, but she did not answer the phone. The Landlord states that it is common practice for KR to not answer or respond to the Landlord's calls. It was this incident that precipitated the need to issue the Tenant with the One Month Notice.

LA, the next-door neighbor and witness, testified that she tried, unsuccessfully, to resolve the problems between KR and herself. The two adjacent properties share a common access into the alley. LA alleges KR intentionally positions the backyard hoses so that LA cannot access her car parked in the laneway without getting wet and water continually sprays onto LA's rental property. LA states that KR lets the water run well past midnight and the water runs down the laneway. LA states that KR installed a gate with a hinge that swings closed and limits LA's access to the alley. LA lived next door since 2008. LA's letter of complaint was submitted into evidence.

KR alleges that she is the victim of "false allegations [made] against me from both my neighbor L and the family that lives downstairs". KR states that the complaint letters from the downstairs' Tenants and the neighbor are suspiciously similar. She alleges the neighbor and the downstairs Tenants conspired with each other against her. KR submitted and referenced her "Response" letter to the Notice.

KR stated that she was out of town when the letter dated September 13, 2022 was delivered and did not receive the letter until her return on September 29, 2022. After reading the letter KR called the Landlord immediately. The Landlord said that he "doesn't know who is lying" and "didn't want to deal with it". KR states the next morning she opened her door to find the Notice taped to her front door along with printouts of the complaints from the downstairs Tenants and the neighbor next door.

KR states that prior to reading the printout taped to her door, she "had no idea" of any conflict with the basement rental unit Tenants. To the best of her knowledge, there were no issues between them. The only complaint KR was aware of was the TV volume, which she immediately turned down when she received the text from the downstairs' Tenants.

KR states that the walkway leads to the common garbage and compost area. KR confirmed she installed the gate with the Landlord's permission on the shared gateway for security reasons. Various "people" who did not reside in the rental units were frequently "cutting through the yard" to access the alley. In June a rock was thrown through KR's bedroom window and in the summer her security camera was stolen. KR submitted two photos showing people in the back yard as well as a photo of a man stealing her security camera. She was away in June and when she returned, the gate had been removed and laid across the back stairs.

KR confirms ongoing disputes with the next-door neighbor LA. KR acknowledges she did yell at LA on August 12, 2022 and LA called the police. The police investigated and concluded that the incident required no further action. KR submitted the partially redacted police file into evidence. The report states in part:

> Police made multiple attempts including multiple VMAILs to call non-emerge and doorknocks to contact POI. Unable to speak with KR to get her side of the story documented but not appropriate for charges as police did not believe the threat to be creditable and, if made, was a comment made in the heat of the moment that was likely a hyperbole; documented to ensure no further escalation.

The police were able to speak with KR and suggested she "choose her words more carefully in the future".

KR denies she prohibited the downstairs Tenants from putting their patio furniture on the backyard lawn. KR submitted a photo of the downstairs' Tenants' patio furniture in the backyard along with a text between the parties about how best to position the furniture.

KR states that since the start of her tenancy, she has always used both the front and backyard. She has always had a garden, and no one complained previously. She denies that her yard was limited to the front yard only.

KR states that she always had full access to the garage and does not have the Landlord's keys to the garage – just her keys.

KR denies placing a "pot of honey" by the downstairs Tenants' door. She confirmed she uses a pot to melt down old brood combs from bees to render beeswax for firestarters she sells as a side business.

She moves the pot to her garden after she removes the wax. The basement rental unit Tenants sent a text dated September 9, 2022 at 4:35 to KR about the honey pot. KR was at work at the time, so the Tenants moved the honey pot themselves. KR submitted the text messages between the parties into evidence. The text message is as follows:

> Fri, Sep 9, 4:35 p.m.
> Hey, can you move the pot that you have in the back. I believe it theirs a bee hive in it. If it's not moved by tomorrow then I will be moving it. [basement rental unit -level downstairs Tenant]
>
> Fri, Sep 9, 5:53 pm
> Its just bees drinking the old honey comb [KR]
>
> We moved it away because we couldn't walk across there [basement rental unit -level downstairs Tenant]
>
> Fri, Sep 9, 7:53 pm
> Ok [KR]

KR acknowledges she has yelled at the Landlord when he just shows up at her door or peers in her windows including her bedroom window. She testified that she has repeatedly asked him to notify her before simply appearing on her doorstep and he persists in arriving unannounced.

KR asserts the problem between the neighbors could be easily resolved if the Landlord built a fence between the properties to separate them.

Analysis

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

> 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.

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

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

[emphasis added]

…..

(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;

I note that subsections 47(1)(d)(i) and 47(1)(d)(ii) uses the adjectives "significantly", "unreasonably", or "seriously" 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. I must decide, based on the evidence and testimony presented, if the Landlord provided sufficient evidence to establish that the Tenant or a person permitted on the property by the Tenant ***significantly*** interfered with ***or unreasonably*** disturbed another occupant or the Landlord.

The Landlord also argues that the Tenant is in breach of a material term of the tenancy agreement.

Section 47 of the Residential Tenancy Act allows the Landlord to end a tenancy for cause:

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

…..

(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;

Policy Guideline 8 explains "Unconscionable and Material Terms"[1]

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. [emphasis added]

[1] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl08.pdf

> 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 on the person relaying on the term to present evidence and argument supporting the proposition that the term was a material term.

The Landlord must prove that it is more likely than not that the Tenant acted as alleged as profided in the Notice. If the Landlord can, I will uphold the Notice and issue an order of possession. If the Landlord cannot, I will cancel the Notice.

The Notice was issued for three (3) discreet reasons:

- The Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- The Tenant has seriously jeopardized the health, safety or a lawful right of the landlord or another occupant.
- 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.

I will assess each in turn.

I must first note that the ongoing conflict between KS and LA is a dispute between neighbors. Although the Landlord owns both properties each property sits on its own lot with separate and distinct addresses. LA is not "another occupant" or "tenant" of the "residential property" where KS lives; therefore, the *Act* does not apply in this circumstance. As such, I am unable to consider any alleged incidents that occurred between neighbors. This means that any disputes between KS and LA are not relevant to this proceeding. I explicitly make no finding in any matters between KS and LA. Any disputes between these parties cannot form a basis on which the issuance of the Notice could be justified.

Unreasonable Disturbance

In the present case, the first reason provided by the Landlord to end tenancy was that the Tenant "significantly interfered with or unreasonably disturbed the Landlord or other occupants".

To reiterate, it is necessary for the Landlord to establish whether or not the Tenant violated the *Act* by engaging in conduct that significantly interfered with **or** unreasonably disturbed others *of a magnitude sufficient to warrant ending the tenancy* under s.47(1) of the *Act*. It is only necessary for the Landlord to demonstrate that **one** of the provisions was contravened in order to dismiss the Tenant's application for cancellation of the Notice to end Tenancy for Cause.

The Landlord submitted into evidence an email from the basement rental unit Tenants. The email lists a number of grievances the basement rental unit Tenants have with KR. Before addressing the substance of this submission, I note the document is undated and unsigned. I therefore am unable to determine when this email was drafted – in other words, if it was drafted before or after the Application for Dispute Resolution was filed by the Tenant.

The Landlord has not submitted any documentary evidence of actual "in-time" complaints made by the basement rental unit Tenants prior to the issuing of the Notice. The only complaint of record is the one verbal complaint the basement rental unit Tenants made on September 29, 2022 to the Landlord about TV volume that, based on KR's affirmed undisputed testimony, was immediately resolved. Thus, the evidence suggests that this was a one-off incident rather than a repeated and ongoing issue.

Further, there is insufficient evidence that the Landlord investigated the list of complaints to determine if the complaints were founded. In fact, the Landlord himself in the warning letter to KR wrote, *"If any of the allegations above are true…."* confirming he did not know if the allegations were founded. It may be the complaints were justified; it may be that they are not. Just because the Landlord was told an alleged incident(s) happened does not necessarily mean that the alleged incident(s) actually occurred. I further note the "warning" letter issued to KS concerned the Tenants living next door with no mention about any basement rental unit Tenants' concerns.

In summary, upon review of the email from the downstairs rental unit Tenants submitted by the Landlord I find in a case where there is no dispute that a Tenant breached the *Act* or a tenancy agreement, a third party written complaint may be sufficient to prove a ground for eviction; however, I note the parties have offered conflicting information regarding the alleged complaints in the email as well as for the noise complaint. Where the Tenant, in this case, KR, calls into question the very nature and substance of those complaints, I must, in the absence of the complainant testifying on their own behalf, give the written complaint little evidentiary weight. The complaint was not submitted into evidence by way of a sworn affidavit nor did the complainant testify under oath and under circumstances that would afford KR her right to cross examination. Additionally, there is insufficient evidence that the authors submitted complaints prior to this dispute arising. For these reasons, I place little evidentiary weight on the substantive evidence put forward.

The Landlord states that his relationship with KR is acrimonious. Based on the accounts from both the Landlord and Tenant it seems that all of the confrontations are in relation to rules, boundaries, and requirements under the *Act.* It is not uncommon that Landlords and Tenants engage in heated discussion about the rules and expectations of one or either party during a tenancy. Given the source of the conflict between the parties, I do not find that any heated discussion about these issues amounts to an unreasonable disturbance of the Landlord. Such encounters come with the territory of being a Landlord.

The Landlord testified he issued the Notice because of the noise complaint in concert with the complaints from the neighbors next door. As stated previously disputes between neighbors cannot form the basis upon which a One Month Notice for Cause is issued.

Based on the evidence and oral testimony as presented, I am unable to conclude on a balance of probabilities that the Tenant *significantly* interfered with or *unreasonably* disturbed the lifestyle of another occupant or the Landlord of the residential property. The general nature of these complaints and the lack of specific information does not establish sufficient grounds for the Tenant's eviction under s. 47(1)(d)(i) on a balance of probabilities.

2**. Seriously jeopardized**

The Landlord alleges two (2) instances where KR "seriously jeopardized" the health or safety or a lawful right or interest of the landlord or another occupant.

The Landlord testified that the KR failed to inform him of an electrical issue that resulted in a $2000.00 repair bill and the need to call in two (2) different electricians to repair the problem. The Landlord did not submit the receipts or describe the nature of the electrical problem or provide information on how or when he was first made aware of the problem in proximity to when the problem occurred or who notified him about the problem with the power to the bathroom.

The tenancy agreement at item 10 "Repair" subsection 3(b) has a standard term that reads:

> If *emergency* repairs are required, the Tenant must make at least two attempts to telephone the designated contact person and then give the landlord reasonable time to complete the repairs.

In this case, both KR and the basement unit Tenants were aware of the electrical issue. It is unclear how the requirement to report maintenance matters is distributed between the two sets of Tenants. Given that the electrical issue affected KR's bathroom, I concur that KR should have notified the Landlord about the electrical problem as soon as possible; however, the Landlord provided insufficient details about who notified him, when he was notified or what was required to complete the electrical repair. Based on the evidence provided, I am unable to conclude on a balance of probabilities that KR seriously jeopardized a lawful right or interest of the landlord.

The Landlord alleges that KR's behavior has negatively impacted his rental income resulting in the frequent turnover of Tenants. The Landlord references numerous complaints received over the years from previous Tenants. Not only are these allegations vague, but the Landlord has also not provided any written material in support that this occurred. At minimum, I would have expected the Landlord to provide copies of past complaint letters and emails from the prior Tenants regarding KS's conduct. Such documents may have provided an evidentiary basis establishing a pattern of behavior. The Landlord has not done this.

I find the landlord's chief complain in issuing the Notice is the ongoing dispute between KR and her next-door neighbor, LA. The warning letter demanded, ***if*** the allegations were true, that KR cease and desist in the various behaviors. Again, neighbor to neighbor disputes are not within the jurisdiction of the RTB; therefore, the "breach" or "warning" letter is not relevant to the cause identified in the Notice. The Landlord failed to prove that there was a cumulative effect from KR's alleged conduct which has caused a lawful right or interest of the Landlord to be seriously jeopardized. I find the Landlord has not discharged his onus proving KR breached s. 47(1)(d)(ii) of the *Act.*

3. Breach of a Material Term

A "material term" as described in *Guideline 8* is a term *"so important that the most trivial breach of that term gives the other party the right to end the agreement*". *Guideline 8* states that a Tenant must be made aware of the breach and provided an opportunity to remedy the matter in a reasonable time.

The September 13, 2022 "warning letter" was issued because of alleged conflict between next door neighbors, KR and LA. To reiterate, a conflict between neighbors is outside the scope of the *Act*.

Further, the Landlord did not identify which term in the tenancy agreement was a "material term" that KR allegedly breached. Accordingly, I find the Landlord failed to discharge the onus of proof as required on a balance of probabilities showing the Tenant was in breach of a material term of the tenancy agreement.

Based on the reasons set out above, I conclude the Landlord has not met the burden of establishing cause under s. 47(1)(b)(i) or s. 47(1)(b)(ii) or s. 47(1)(h). I find that the Notice was not issued for valid reasons. I order that the Notice is cancelled and of no force or effect.

Pursuant to section 72(1) of the *Act*, as the Tenant has been successful in the application, she may recover their filing fee from the Landlord.

Conclusion

I grant the Tenant's application to cancel the Notice. I order that the Notice cancelled and of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

Pursuant to s. 65 of the *Act*, the Tenant may deduct $100.00 from one future months' rent in satisfaction of this amount. The Tenant may deduct $100.00 from

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: December 29, 2022

Residential Tenancy Branch