Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC, OLC, FFT
Landlord: OPC, MNDCL-S, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on March 21, 2023 to dispute the One Month Notice to End Tenancy for Cause (the "One-Month Notice") served to them by their Landlord. The also seek the Landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The Landlord filed a cross-Application for Dispute Resolution on March 28, 2023 seeking an order of possession of the rental unit. They also seek compensation for monetary loss/money owed, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 29 ,2023. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Preliminary Matter – evidence disclosure

The Tenant presented that they sent their evidence for their Application to the Landlord via registered mail, with a later update on June 9. The Landlord stated their observation that the Tenant did not provide evidence initially when notifying the Landlord of this hearing, with that evidence being available to the Tenant at the time they made their Application.

In response to the Tenant's Application, the Landlord sent their evidence – in its consecutive iterations and updates as the issues evolved and the Tenant responded them – via email. The Tenant stated they had no issue with the Landlord providing evidence to them directly in this manner.

The Landlord cited the Residential Tenancy Branch Rules of Procedure to submit that the Tenant did not provide evidence as they should have with their initial Application. They requested my exclusion of all of the Tenant's evidence for specific violations of Rules, as well as procedural fairness.

On each Rule cited, where relevant, I note the following:

- Rule 2.5 provides that an applicant should submit evidence to be relied on at the proceeding – "To the extent possible". I find there was no breach of procedural fairness to the Landlord where the Tenant had not compiled evidence in this matter after submitting their Application to the Residential Tenancy Branch.

- It is questionable whether evidence was available to them at that time, and on this I look to the copy of the One-Month Notice that is in the evidence. I find this was densely-packed with a lot of information from the Landlord in a font that is not visible on plain reading. This in itself is prejudicial to the Tenant, where it is not immediately clear what the issues are, nor the details thereof. I find it reasonable that the Tenant simply needed time to present their case after assessing what the numerous issues were.

- I find the Tenant did not unreasonably delay service of evidence, again noting the overlapping issues with a lot of information presented to them by the Landlord. I find there is no prejudice to the Landlord who presented the issues to the Tenant, and this is not a situation where the Tenant provided notice of an application to the Landlord with no other information. Had it been the other way around, then possibly the Tenant not providing evidence at the initial stage could be seen as prejudicial to the Landlord; however, I find that is not the case here.

- The Landlord otherwise cited 14-day and 7-day timelines for submissions and responses, and in each case the Rule states that the Arbitrator has discretion on whether to accept such evidence. I note for the record that both parties provided evidence beyond these timelines as set in the Rules, and I did not preclude consideration for that reason. In the Landlord's case, they provided up to 9 amendments of one particular document, and revised their written submissions a few times, and chose to include edited documents showing what the changes were (*e.g.*,

titled ‘First Amended Supplemental Landlord Response to Tenant’s Unjustifiably Delayed Evidence’). This was a lot of paperwork to process, and I mention this only to show that neither party complied with the timeline Rules of Procedure in place. The Landlord also chose to ignore the Rules concerning timelines when making their submissions.

I include all evidence provided by the Tenant for the reasons set out above and I am not excluding it for the reasons submitted by the Landlord. I find that, fundamentally, the Tenant provided evidence to the Landlord as required, and the Landlord did not provide further detail on how they were prejudiced by the Tenant not submitting evidence at the time of their Application. I find the Landlord asks for a purely arbitrary consideration of Tenant’s submission timeline, without particular note of the effect.

Issues to be Decided

A. Is the Tenant entitled to an order to cancel the One Month Notice?

   If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

B. Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

C. Is the Landlord entitled to compensation for monetary loss/other money owed, pursuant to s. 72 of the *Act*?

D. Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

E. Is the Landlord entitled to compensation for monetary loss/other money owed, pursuant to s. 72 of the *Act*?

Background and Evidence

A copy of the tenancy agreement in place between the parties shows that agreement started on November 26, 2022. This was after previous agreements were signed by the parties in 2013, 2015, 2017, 2019, and 2021.

The current agreement shows a rent amount of $3,500 per month, payable on the 1st of each month. A security deposit amount of $800 was carried over from previous tenancy agreements.

The Landlord drew attention to certain clauses in an addendum and/or the agreement:

- sublease: requires the written consent of the Landlord – the Tenant stated they were unsure whether the situation as it existed was actually a subletting situation, where occupants in a small suite in the rental unit have access to all areas

- Occupants: there may be no more than one family living in the rental unit . . .if not approved by the Landlord the unauthorized occupancy shall be a material breach of the tenancy agreement

In one response provided by the Landlord, they noted in detail the circumstances of the creation and implementation of the most recent agreement between the parties. They also specified that the agreement in its entirety, including its addendum, was sent to the Tenant for their review.

A. The One-Month Notice

Both parties provided a copy of the One-Month Notice, signed by the Landlord on March 14, 2023. This gave the final end-of-tenancy date as April 30, 2023.

On page 2 of the document the Landlord indicated the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit

- Tenant or person permitted on the property by the Tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - put the Landlord's property at significant risk

- Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park

- Tenant has assigned or sublet the rental unit. . . without the landlord’s written consent

The Landlord provided details on page 2:

The tenant [. . .] have significantly interfered with the landlord, as they have failed to promptly and properly respond to landord's requests after the rental property, located at [rental unit address] experienced flooding in February 2023. The tenant was repeatedly notified, via oral communication, email and legal notice, to remove their belongings from the basement, which is urgently required to address the damage caused by the recent flood. However, the tenant had ignored these requests or made excuses, causing further damage to the property and preventing the landlord’s contractors and agents from making the necessary emergency repairs. The tenant's uncooperativeness on this issue and 12 days of interference violated Section 47(1)(d)(i) of the Residential Tenancy Act (RTA) and placed the property at great risk of significant damage. While the tenant ultimately agreed to remove their belongings on February 25, 2023, it was far too long after the initial request and not without significant delay on the tenants part. The tenant admits in an email to having called the landlord's insurance agent on or around February 12, 2023 about "transporting basement contents". The tenant has caused extraordinary damage to the property. The tenant's daughter overloaded the electrical system by using a dehumidifier, dryer, washer, fans, and a heater all at the same time in the basement, causing damage to the electrical system. The tenant has violated Section 32(3) of the RTA, which requires tenants to take reasonable care of the rental unit and ensure that their guests do not cause damage to the rental unit or property. The tenant admitted to the landlord that their daughter overloaded the electrical system, despite making false statements in their correspondence to the landlord's agent Justin Pannu. The tenant has breached material terms of the tenancy agreement, including Section 7(1), Section 29(1)(b), Section 32(2), Section 32(3), and Section 34(1) of the RTA. In February 2023, upon investigating the Landlords insurance claims, the insurance agent made the Landlord aware of unrelated occupants of the property despite tenant's promise to the landlord to have only family members on the property. The tenant has seriously jeopardized awful right of another of the landlord. The tenant's failure to promptly and properly respond to landlords request remove their belongings from the basement has created hazardous conditions, including the risk of mold contamination, which can cause a variety of health problems and further property damage if not handled properly. The tenant's interference and delay undoubtedly made any asbestos issues worse. The tenant's breaches of the tenancy agreement, including the unauthorized renting of the basement, are causes for eviction. The tenant has sublet part of the property to unrelated occupants without the landlord's written permission, violating Section 34(1). Prior to the effective date of the new tenancy agreement effective November 26, 2022 the Landlord was aware of the tenant renting the basement to an unrelated party. In the new tenancy agreement, the tenant agreed to a new clause that would require it to only have family living at the property. However, the tenant continued to sublet the property to unrelated occupants in violation of Section 9 of the addendum to the tenancy agreement, which clearly states that there may be no more than one family living in the Rental Unit.

Notices Sent: On or around February 12, 2023, the landlord and landlords insurance agent orally notified tenant to remove tenant's belongings from the basement for emergency repair to the flooded rental property. On February 21, 2023, the landlord's insurance agent, [. . .], notified the tenant, via email, of the

need to remove all contents from the basement before repairs can begin. On February 22, 2023, the landlord's insurance agent, [. . .], notified the landlord via email, of the emergency nature of the situation and the risk of mold contamination, which the landlord forwarded in an email with a legal notice to the tenant on February 22, 2022. On February 24, 2023, the landlord's agent, [. . .], sent a notice to the tenant, instructing them to remove their belongings from the basement as soon as possible as tenant continued interfering on February 23, 2022. As to the causes related to the breach of the tenancy agreement and unreasonable amount of occupants the tenant agreed on November 26, 2022 to have only their family living in the rental unit. The tenant cooperated with landlord/contractors after these notices and because the landlord was desperate to get the flood damage repaired without having to apply to the RTB for an emergency hearing, Landlord waited until contractor was completed emergency repairs to issue this One Month Notice to End Tenancy. Contractor notified Landlord of emergency repair completion on March 13, 2023.

i. interference, disturbance, and damage/risk to property – preventing repairs

The Landlord referred me to their summary document dated June 6, 2023 describing the flood event in detail, listing the following points re-stated by the Landlord in the hearing:

- on February 11, 2023 the Landlord informed the Tenant that the basement's contents needed to be removed immediately for emergency repairs (the Tenant denies this conversation took place)
- the Tenant failed to comply with this, violating s. 47(1)(d)(i) of the *Act*
- the Landlord provided a written notice to the Tenant on February 22
- the Tenant delayed removal of belongings, prompting another notice from the Landlord on February 24 – while the Tenant acknowledged the urgency to the Landlord's insurer, they stated to the Landlord that there was no adequate written notice that provided a date – this constitutes a "false belief" of the Tenant whereby the Tenant also accused the Landlord of making threats
- this was "obstruction of necessary repairs" by the Tenant, thereby causing damage to the property – the Tenant sought to delay any repairs "by sending argumentative emails"
- the Tenant caused damage to the electrical system due to "the overloading of appliances in the basement"
- the Tenant failed to "keep the rental unit and shared areas clean and reasonably safe"

In the hearing, the Landlord clarified that after the flood event, on February 11 they instructed the Tenant to remove their belongings from the basement. The Landlord's requests continued up until February 16. The Landlord pointed to the specific pieces of their evidence that show their communication to the Tenant on February 22 and February 24. The Tenant, in response to one piece of communication, acknowledged the need to have items removed. It was not

until the timeframe of February 24 to February 26 that the items from the basement were removed.

The Tenant provided a comprehensive written description of the issues from their perspective. In this document they described the Landlord's response to the flood/water issue as "inadequate after Feb. 16", while they "expended considerable energy in mitigating property damage to the house by voluntarily removing floodwater and wet carpeting". They called and messaged the Landlord to speak to them; however, the Tenant "received no information on how things would proceed and thus sent an email on Feb 22 having heard nothing from [the Landlord] in 6 days."

The Tenant noted specific details on exact dates:

- February 9: rain filled both front and back rooms of the house – they called the Landlord and the Landlord, together with their insurer and restoration team, visited the rental unit – the team mentioned the need to be emptied, though "it isn't stated when or how exactly this will need to be done"
- February 10: the Tenant files a claim with their own insurer, later to be informed that water damage would be the responsibility of the Landlord
- February 20: the Landlord insurer's restoration team visited and "informed [the Tenant] that the basement would need to eventually be at least partially empty before work can begin." – again with no specific instruction to empty the basement completely, with no date mentioned
- February 21: no reply from Landlord – the insurer, in response to a query from the Tenant, informed them that "you must remove all of the contents in the basement before we can start repairs", again with no end-date
- February 22: the Tenant emails to the Landlord to inquire whether the Landlord would send someone to remove basement items and debris – on this point the Tenant reiterated that they had "so little information about how things need to continue" – they received a notice of entry and 'notice to remove belongings' via email from the Landlord – the Tenant stated plainly that this was the first time the Landlord gave a set date, and there were previously no set dates that the Tenant had ignored
- February 23: the Tenant mistakenly messaged the Landlord about the matter, intending that message to be sent to a different contact, in which they "made light of the document [the Landlord] had sent"
- February 24: the Tenant orders a storage container for their possessions – Landlord served 'notice of breach of tenancy agreement' re: others living in the rental unit
- February 25: the Tenant moves possession to the storage container, or disposal

They deemed the communication from February 22 onwards to be “harassing”, because of the ‘professional (legal) notices’ that the Landlord sent. This was a marked change from the communication over many years in this tenancy.

Once the Tenant received a firm date by which to have their items moved, they “did so and met [the Landlord’s] deadline.” The Tenant described being “compliant with all communications . . . about when restorers needed access to the property.” Moreover: “in the case of moving our property from the house basement, there was no date set to do so by the landlord’s, despite their claims to the contrary based on a supposed verbal communication which did not take place.” The restoration contractor, according to the Tenant, told them that they didn’t need to remove everything from the basement “all at once, and that rooms could be done piece by piece. . .”

The Tenant listed two other water-based issues (January 2019 and November 2021) in the rental unit by which they had to remove items and cooperate with repairs and cleaning after those events. This included the Landlord hiring a plumber and providing a fan and a dehumidifier.

The Landlord provided a written response to the Tenant’s written submission. They noted the Tenant was waiting for the Landlord to “cave into [the Tenant’s] demands for the removal of their belongings”, paid for by the Landlord. They had several instances of verbal communication between February 8 and February 16, “before resorting to letter writing.” The Landlord then referred to their own phone records (12 outgoing to the Tenant) in that short timeframe, illustrating the level of their concern. The Landlord also provided explanations on the likely cause of the flood, to rebut the statements by the Tenant that the property was inherently prone to flooding through the Landlord’s questionable maintenance of the property.

In the hearing, the Tenant stated they took on the task of removing water all on their own, as captured in video. This included taking out the carpet. The first notice from the Landlord was not until February 22, via their insurance agent. They were awaiting instructions from the Landlord, being “not sure how to approach the problem”. They also stated in the hearing that they had an accurate recall of what phone calls were made at the time. As such, the Tenant had 2 days’ notice to have all items out from the basement. They obtained a storage container and had everything moved into that contained by the time required by the Landlord; this was 2 business days. The Tenant requested clarification upon being served the One-Month Notice; however, they received a rude response from the Landlord.

The Landlord rebutted the Tenant's response in the hearing: they hired someone on their own to remove water from the basement. There was a high number of calls and messages to the Tenant that reveal the Landlord's concern

ii. alleged subletting & unreasonable number of occupants

On the Tenant's breach of material term of the agreement – specifically, by subletting without consent -- the Landlord listed the following details:

- the Tenant rented the basement to "unrelated occupants" without the Landlord's written consent
- the Landlord issued a notice to the Tenant about this issue on February 24
- the Tenant had lived at the rental unit since 2013 and "occasionally rented out the basement to unrelated occupants" – the Landlord required a specific clause in the tenancy agreement addendum for this specific reason
- the Landlord learned of other occupants residing in the basement from their own insurance agent

Elsewhere in the Landlord's submission, they noted that the Tenant "did not dispute the February 24, 2023 notice that they had breached a material term of the tenancy agreement by renting the basement to unauthorized occupants." The Landlord also stated "the Tenants . . . had occasionally rented out the basement to unrelated occupants and therefore the Landlord required this clause [i.e., set out above] in the new tenancy agreement effective November 26, 2022."

The Tenant, in their written account, described having many roommates since 2014 – this does not constitute subletting or assigning the tenancy agreement. They always lived there together with roommates. Further, the Landlord was "well aware" that roommates were living in the 2-room basement suite, and "have met them more than once" since November 2021. Further, during the most recent tenancy agreement signing, the Landlord mentioned to the Tenant that roommates would help alleviate the impact of an increase in rent. The Tenant stated these roommates left on February 12, 2023.

The Tenant also presented that the Landlord received a copy of the roommate's tenancy insurance in February 2022. The "supposed reason for not having roommates" [*i.e.*, the Landlord seeking to end the tenancy] is that the Landlord's home insurance policy doesn't allow for this.

In the hearing the Landlord reiterated that their own insurance agent informed them about the extra people residing in the rental unit, in violation of the tenancy agreement. The Tenant disputed this specifically, referring to the Landlord's previous visits and inspections in the rental unit.

In the hearing, the Tenant stated they did not inform the Landlord that they told the other residents at the rental unit to vacate. They had no prior notification from the Landlord that roommates could not be in the rental unit. The Landlord had insurance documents as required from the roommates, and the Landlord had met the roommates on several occasions.

In a further reply, the Landlord stated that they used the term 'sublet' as the same meaning as the Tenant renting the basement to roommates. They submit roommates would not be allowed as per the most recent iteration of the tenancy agreement between the parties, from late November 2022 onwards, and the Tenant was fully aware of this.

iii. alleged damage by the Tenant – electrical issue

In their written account, the Landlord set out that the Tenant violated s. 7(1) and s. 32(3) of the *Act* by damaging the electrical system, "due to the overloading of appliances in the basement."

In their written account, the Tenant described running the laundry, 2 fans, and a small dehumidifier, when "half the house lost power" on February 8, 2023. The Tenant contacted the Landlord, who then contacted an electrician. The electrician stated this was an "old fusebox" requiring a replacement part. Once retrieved and installed, the power was restored. The Tenant clarified that the breaker didn't "blow" from overuse of power; rather, the part itself was broken and required replacement.

In their written account, the Tenant also included the detail that the electrical system had no trouble handling increased usage from 6 additional dehumidifiers. This was after the electrician replaced the part in question.

On February 24, the Tenant received a notice from the Landlord that described the Tenant "broke the electrical system", and the cost of the electrician's visit would be deducted from the security deposit.

In a response to the Tenant's written submission, the Landlord provided that their own electrician informed them that "the issue could be due to the Tenant's usage or other factors unrelated to the Tenant". The Landlord submits it is most likely the Tenant's usage that

contributed to the electrical system damage. The Landlord notes this particular damage was paid by their insurance claim.

B. Landlord's compliance with Act and/or tenancy agreement

On their Application, the Tenant described this ground for dispute resolution as follows:

> Landlords communication to us in this stressful situation have been minimal to zero about how the house repair would proceed or on any manner which they are now using as grounds for attempted eviction.

In their written response to the Landlord's submissions, the Tenant refers to both the Landlord's lack of integral communication during the time immediately after the floor, as well as the legal-style documents the Landlord did send from February 22 onwards. The use of "long-winded, overly complex legal documents instead was unhelpful and felt like harassment." To the Tenant, this equates to the Landlord "failing to act in accordance with the rules and regulations of the RTA or the tenancy agreement."

In their written submission, the Landlord states the Tenant "failed to provide evidence of any issue the Tenant had with the landlord's alleged failure to comply with the law." More generally in a written response to the Tenant's written submission, the Landlord stated that they encouraged open communication to expedite repairs.

C. Landlord's compensation

The Landlord on their Application requested $1,000 for their agent's fee. This was "to search and screen new tenants and create tenancy agreement." As proof, they provided an invoice showing "new tenancy fixed fee" for that amount, invoiced on March 28, 2023.

The Landlord referred to section 5 of the tenancy agreement addendum, which sets out the Tenant's responsibility for any economic loss to the Landlord if the Landlord terminates the tenancy for cause. This includes "any administration fee charged by the Landlords agent to rent the Property plus advertising fees . . ."

In their written submission, the Tenant referred to this invoice as an example of the Landlord's "bad faith". They noted they still live in the rental unit and the rental unit is "hardly rentable at this point in time [*i.e.*, the pre-hearing interim period]."

Analysis

Though the parties made submissions and disputed each other's understanding on the specific content and implementation of the most recent tenancy agreement iteration, the terms therein, or the parties signing the agreement does not form any basis in my analysis below. Neither party presented that they were unaware of the terms or forced to sign the agreement under duress.

A. The One-Month Notice

The *Act* s. 47 sets out the reasons for which a Landlord may give a One-Month Notice. This includes the reasons indicated on that document served to the Tenant here. Given the volume of submissions in this hearing, and contradictory statements contained in submissions provided to the Residential Tenancy Branch up until the day of the hearing, I organized the submissions/issues as set out in the subheadings above, reproduced here below for analysis.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord provided all related correspondence in this matter and spoke to the reasons in their written submissions. On my evaluation of this evidence, and with consideration to the submissions of the Tenant here, I find the One-Month Notice is not valid.

i. interference, disturbance, and damage/risk to property – preventing repairs

I am not satisfied the Tenant caused extraordinary damage in the rental unit through what the Landlord alleged was non-response and non-cooperation on removal of their personal possessions from the basement. Primarily, the Landlord relied on the verbal communication on that to the Tenant, trusting that that communication was clear in telling the Tenant that their possessions had to be removed as soon as possible. I find the Tenant's explanation on this more plausible, and the Landlord did not provide their own similarly detailed timeline of events and discussions, doing so only in response to what the Tenant provided, as a rebuttal. With the onus on the Landlord, I find their case for seeking to end the tenancy because of the Tenant's behaviour and actions at that critical juncture was not plain in the evidence. Phone records don't reveal actual content of any conversations had; therefore, I prefer the Tenant's evidence on this singular point.

I find it more likely than not, and prefer the Tenant's version of events, that in their communication with the Landlord and their insurer, that the Landlord did not state clearly to the Tenant that all possession had to be removed forthwith. Additionally, I find the Tenant clear on the point that they did not receive this messaging, and did receive nuanced messaging, from the insurer/restoration team. I place the responsibility for that communication on the Landlord

as the property owner, and the Landlord did not prove on a balance of probabilities that the immediate need for an empty basement was communicated to the Tenant.

For the reasons above, I find the Tenant did not violate s. 32 concerning their obligation to repair or maintain the rental unit to such a degree as to constitute grounds for the Landlord ending the tenancy. Nor did the Tenant violate other sections cited by the Landlord in their submissions, some of which only obliquely apply to the situation, such as s. 47 (which is impossible for the Tenant to breach), and s. 29 (concerning a particular responsibility of the Landlord, also impossible for the Tenant to breach).

The Landlord also did not show categorically that the actions of the Tenant caused further damage to the rental unit. The Landlord did not point to specific communication from their insurer/restoration team that stated plainly that this was the case. The finalized insurance claim in this event was not referred to by the Landlord in their submissions; therefore, I cannot conclude that the Tenant's actions (or rather, inaction, as alleged by the Landlord) caused damage to the rental unit.

Similarly, the Landlord did not prove on a balance of probabilities that the Tenant's communication or inaction during the time period in question equated to a significant risk. On this, I accept the Tenant's detailed evidence that they worked hard immediately after the flood incident to remove water and carpeting. I find this was with the Landlord's best interests in mind, and in order to attend to the Tenant's own possessions and living space. I cannot ignore the testimony and written submissions of the Tenant that they worked hard immediately after the incident, and I assign greater weight to the Tenant's evidence that they at no time effectively blocked the Landlord's entry, nor that of the insurer/restoration team.
In sum, I find the Landlord has not provided sufficient evidence of grounds to end the tenancy either for interference, disturbance, damage, or significant risk to the property. The Landlord also did not prove there was serious jeopardy to their health, safety, or lawful rights.

ii. alleged subletting & unreasonable number of occupants

The Landlord in the hearing stated they would leave it to my determination on whether subletting occurred. As referred to in the *Residential Tenancy Branch Policy Guidelines*, particularly *19: Assignment and Sublet*, a sublet is when the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and a sub-tenant enter into a new agreement (*i.e.*, a sublease agreement). I find categorically the situation in place with this tenancy was not that of a sublet. This nullifies that specific reason indicated on the One-Month Notice by the Landlord. The onus is on the Landlord to prove that subletting occurred, and they did not do so here, even explaining that they conflated the

meaning of that term with the situation involving roommates. I find this explanation from the Landlord was after the fact, and it could not be left for the Tenant solely to interpret that the Landlord was referring to their roommates, when a "sublet" is something else quite specific.

The Landlord indicated there was "an unreasonable number of occupants in the unit", also checking this as a reason for serving the One-Month Notice. I find that was not the case, and the Landlord was not able to point to specific terms of the agreement that set out an exact number of occupants allowed in the rental unit, nor that any additional parties present in this instance proved to be "unreasonable" in number. I also consider the concept of estoppel in this longer-term tenancy; I find roommates were in place in the rental unit for quite some time without a reasonable number concept being explicitly stated.

The Landlord did not indicate on the One-Month Notice specifically that they were seeking to end the tenancy for a breach of a material term in the tenancy agreement. The Landlord referred to this in their written submissions and relied on this concept as the basis for their communication to the Tenant on the issue of roommates on February 24. Because the Landlord did not indicate this specifically on the One-Month Notice, I find that cannot stand as a reason for ending the tenancy. Again, it would not be for the Tenant to infer that they violated any material term of the tenancy agreement without that reason specifically indicated on the document, and only a passing reference in place in the details the Landlord provided on that document, and in reference to specific sections of the *Act*, not the specific term in the tenancy agreement the Landlord relied on for other communication.

Should the Landlord choose to maintain that they may end the tenancy for a breach of a material term in the agreement, I find that communication on that singular point was not specific. The Landlord presented that the Tenant violated s. 47(1)(c) of the *Act* (again, not something breached by a tenant, rather that section serves as authority for a landlord to issue a One-Month Notice), and that the Tenant did not dispute the Landlord's written notice about the issue on February 24, 2023. On this point again I find the Landlord not clear: there is no dispute resolution process left for a tenant to dispute a written notice that is *not* an end-of-tenancy notice, and in any event, I find as fact that the roommates had moved out by that time.

On the reason of roommates being present in the rental unit, I find the roommate situation had ended by the time the Landlord served the One-Month Notice on March 14, 2023. I find the Landlord was not aware of the change in the situation, given that effective communication with the Tenant had ended by that time.

In sum, I find the Landlord presented no evidence to show that these reasons as indicated on the One-Month Notice are valid grounds for ending the tenancy. This was not a sublet

situation, and the roommate situation was remedied prior to the Landlord issuing the One-Month Notice.

iii. alleged damage by the Tenant – electrical issue

As above in the flooding issue, I find the Landlord has not proven definitively that damage resulted – specifically "extraordinary damage" as worded on the One-Month Notice – from the Tenant's negligence or action. It was a one-off incident involving a breaker that required repair, and I consider the age of the rental unit property (stated by the Tenant as built in 1960) when factoring in that the need for incidental repairs will arise. I find this repair was necessitated concurrent to other ongoing issues between the Landlord and the Tenant; therefore, the Landlord added this in as one more issue negatively affecting the tenancy. I find that, prior to the flooding incident and subsequent communication, there was no question of damage of an extraordinary nature arising from the Tenant's common everyday use of the rental unit. This cannot stand, in and of itself nor concurrent with other grounds that I dismiss above, as a reason for ending this tenancy.

For the reasons set out above, I cancel the One-Month Notice the Landlord issued to the Tenant on March 14, 2023. The tenancy shall continue, and the One-Month Notice is null and void.

The *Act* s. 55 only allows for an order of possession to a landlord in the case where an arbitrator dismiss a tenant's application to cancel the One-Month Notice, or otherwise upholds the One-Month Notice. I am not dismissing the Tenant's Application, and for the reasons listed above I am not upholding the One-Month Notice. Therefore, s. 55 does not apply to this situation and I am not granting an order of possession to the Landlord here. I dismiss this piece of the Landlord's Application, without leave to reapply.

B. <u>Landlord's compliance with Act and/or tenancy agreement</u>

I find the Tenant did not identify a specific section of the *Act* or the tenancy agreement being violated or otherwise breached by the Landlord. The general communication pattern between the Tenant and the Landlord does not rest solely with the Landlord, and proper communication in a set nature as such is not named as a specific obligation of the Landlord in the *Act*. The Tenant alluded to more jovial communication with the Landlord in the past. I find the situation that presented itself to the Landlord, necessitating their use of an agent who communicated differently with the Tenant, to a marked degree, does not constitute a violation of any section of the *Act* or the tenancy agreement.

I find the term ‘harassment’ was used offhandedly, and without definition, by the Tenant to describe the Landlord’s communication. Based on a common definition – that of unwanted physical or verbal behaviour that offends or humiliates a person – I find the term does not apply to the tense communication initiated by the Landlord in later February. Again, this was a marked contrast to what the Tenant was used to, and while its impact was severe, I find there was no breach of the *Act*, the tenancy agreement, and nothing approaching a common law or criminal law definition of “harassment”. I dismiss this piece of the Tenant’s Application for this reason.

C. Landlord’s compensation

Above, I find this tenancy is not ending by way of the One-Month Notice. I grant the Landlord no compensation for any fees associated with ending the tenancy, given there was no breach of any part of the *Act* by the Tenant.

D. Landlord’s Application filing fee

The Landlord was not successful in their Application; therefore, I dismiss their claim for reimbursement of the Application filing fee.

E. Tenant’s Application filing fee

The Tenant was successful in their Application; therefore, I authorize the Tenant to withhold the Application filing fee amount of $100 from one future rent payment. The authority for this deduction is in s. 72(2)(a) of the *Act*.

Conclusion

For the reasons outlined above, I order the One-Month Notice issued on March 14, 2023 is cancelled and the tenancy remains in full force and effect. I dismiss the Landlord’s Application for an Order of Possession for this reason.

I dismiss the Tenant’s application for the Landlord’s compliance with the *Act* and/or tenancy agreement.

I dismiss the Landlord’s claim for compensation as set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 28, 2023

Residential Tenancy Branch