

DECISION

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy for Cause signed on January 24, 2024 (the “One Month Notice”);
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

By way of amendment filed with the Residential Tenancy Branch on February 1, 2024, the Tenant withdrew his claim under s. 72 of the *Act* for his filing fee on the basis that it was “not applicable”. As such, this portion of the application will be removed.

The Landlord files its own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the One Month Notice; and
- return of the filing fee pursuant to s. 72.

M.M. attended as the Tenant. The Tenant was assisted by his son, C.C., who spoke on his behalf.

M.M. attended as the Landlord’s agent and property manager. K.D. attended as an owner of 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.

Service of the Applications and Evidence

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Tenant’s Claim under s. 62 of the Act

The Tenant seeks an order under s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, or tenancy agreement. In his application, the Landlord describes the claim as follows:

No reason for eviction.

At the hearing, I sought submissions from the Tenant on whether this was independent relief from his dispute of the One Month Notice or merely a continuation of the original claim. The Tenant and his son were unable to answer my question, nor made submissions on why this claim was advanced given the Tenant filed to dispute the One Month Notice.

I find that the Tenant’s claim under s. 62 of the *Act* is a duplication of the claim disputing the One Month Notice. It is not independent relief and is improperly pled in the application.

As such, I dismiss the claim under s. 62 of the *Act* without leave to reapply.

Preliminary Issue – Amending the Style of Cause in the Tenant’s Application

The Tenant, in his original application, named M.M. as the landlord. I note that the Landlord, in their application, name themselves as a company, the same which is noted within the tenancy agreement and One Month Notice. The Tenant, after filing the application, filed an amendment on February 2, 2024 correcting the name for the Landlord as the company listed in the tenancy agreement.

It is unclear to me whether this amendment was served on the Landlord. Despite that, I accept it is appropriate to amend the Tenant’s application to correct the name for the Landlord to what is stated in the tenancy agreement.

Issues to be Decided

- 1) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to the return of its filing fee?

Background and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

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

- The Tenant moved into the rental unit on April 1, 2021.
- \$1,360.00 is due on the first day of each month for rent and partial utilities.
- A security deposit of \$575.00 was paid by the Tenant as well as a \$75.00 deposit for keys.

I have been provided with a copy of the tenancy agreement.

1) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by giving at least one month's notice to the tenant.

Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the respondent landlord.

Service and Form and Content of the One Month Notice

The Landlord's agent advises that the One Month Notice was personally delivered to the Tenant on January 25, 2024. The Tenant acknowledges service of the notice. Accepting this, I find that the One Month Notice was served in accordance with s. 88 of the *Act* and received by the Tenant on January 25, 2024.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application disputing the One Month Notice on January 31, 2024. As such, I find that he filed to dispute his notice within the time permitted by s. 47(4) of the *Act*.

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 One Month Notice. I find that it complies 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 is in the approved form (RTB-33).

Alleged Causes for Ending the Tenancy in the One Month Notice

The One Month Notice is issued on the following grounds:

- The Tenant, or person permitted on the property by the Tenant, has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. (ss. 47(1)(d)(i) and 47(1)(d)(ii) of the *Act*)

- The Tenant, or a person permitted on the property by the Tenant, has engaged in illegal activity that has or is likely to damage the Landlord's property.
(s. 47(1)(e)(i) of the *Act*)

The Landlord, in the One Month Notice, describes the cause for ending the tenancy as follows:

Details of the Event(s):
 [REDACTED] while drunk and smoking marijuana has sexually assaulted 3 tenants, one tenant for the second time. By kissing them on the lips without their knowledge or consent. Leaving them shocked and feeling uncomfortable living in their homes. One tenant was a male.
 The other woman met [REDACTED] after he knocked on her door, Smelling of alcohol & in a confrontational manner, she endured him holding her hips and then grabbing her face, she could not get free as he proceeded to kiss her. He said "your such a pretty Lady" as she got free he was leaning on her apartment door moving his hips and smiling with a wink suggesting that the three of them could work out their differences by having some sort of sexual relations.
 This tenant has never felt safe in the building & even though the Police & myself spoke to [REDACTED] asking him to leave the tenants alone he tried to engage with them. The Police told me he is known to them. We have video evidence, Three e mails from tenants & an e mail from another tenant about his drinking and driving. No charges have been filed, the tenants in question want him to leave the building so that they may feel safe and comfortable in their homes. They are hoping he will do the right thing by leaving before this goes to a hearing.

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

The Landlord's agent began to make submissions regarding a motorcycle and dog at the property. At the hearing, I made clear to the Landlord that I would not entertain upholding the One Month Notice on the basis of issues not specifically alleged within the notice itself.

To be clear on why I did not permit these submissions, the *Act* provides certain procedural and substantive rights to landlords and tenants in residential tenancies that would not otherwise exist at common law. It is for this reason that the *Act* is said to have a protective purpose. The ability of landlords and tenants to end tenancies are set out and constrained by Part 4 of the *Act*, which is where s. 47 is located.

Within this context, s. 47 of the *Act* permits landlords to end a tenancy for cause by serving a notice to end tenancy on tenants. Tenants may, in response, file to dispute the notice provided they do so within 10 days of receiving the notice. Tenants may also accept the notice and vacate. However, a tenant cannot properly respond to a notice if the basis for which it is issued is not clearly stated within the notice itself.

Simply put, the requirement of a landlord to clearly describe the cause for ending the tenancy is procedural protection for tenants to ensure they can inform themselves on whether they wish to accept the notice or dispute it.

I will not uphold the One Month Notice except on the basis of the allegations set out by the Landlord in the notice and do not consider issues that are not related to those allegations.

Alleged Sexual Assaults

The Landlord's agent advises that she received a complaint from other tenants at the residential property with respect to allegations of the Tenant touching and kissing them without their consent.

I am told that the first complainant, R.I., reached out to the Landlord's agent in December 2023 with respect to an incident that took place on December 3, 2023. The details of R.I.'s allegations are summarized in an email she sent to the Landlord's agent on December 18, 2023, a copy of which was put into evidence.

In the email, R.I. indicates that the Tenant came to her rental unit door on December 3, 2023 because of a noise issue he had with her. I understand R.I.'s rental unit is located above the Tenant's. The email describes how on that occasion the Tenant touched R.I.'s neck and hips and kissed her neck.

The Landlord's agent says that R.I. moved out of her rental unit due, in part, to her concerns of living in the property as the Tenant.

The Tenant denied sexually assaulting R.I. He and his son argued the Landlord's agent had it out for him and that the agent was responsible for either drafting or inducing the tenant in question to generate the complaint.

The Landlord's agent denies fabricating the other tenant's complaint.

The Landlord called R.I. as a witness in response to the Tenant's allegations. The Tenant took no issue with permitting the witness despite not being notified of the same at the outset of the hearing.

Given the Tenant took no issue on R.I. providing testimony, I permitted the Landlord to call her as a witness. I note that given the Tenant's allegations, R.I.'s testimony could prove relevant to addressing the question whether her complaint was fabricated. Though I did not make this finding at the hearing, I do find the probative value of R.I.'s testimony outweighed any prejudice to the Tenant, particularly given he raised no objection to her testifying.

R.I. testified that she moved into her rental unit in June 2022 and vacated it on March 28, 2024. She says that she left for a few reasons, namely to be closer to work and family, but emphasized that she was fearful of the outcome of this hearing and living in the same property as the Tenant. R.I. denied that her allegations were induced or encouraged by the Landlord's agent, or that she owed the agent a favour for allowing her to have a pet in her rental unit.

She outlines that on December 3, 2023 the Tenant knocked on her door, that he smelt of alcohol, and had slurred speech. She says that the Tenant complained of noise coming from her in the rental unit and that during the conversation, the Tenant touched her hips and face, and told her she was a pretty girl. R.I. indicates that she tried to be friendly to get out of the situation.

On cross-examination, R.I. admits that she hugged the Tenant and wished him a good night. She also outlined how she attempted to avoid the Tenant from that point onwards, expressing a level of anxiety passing his rental unit when she came and went to her home. R.I. testified to being fearful of what the Tenant.

The Landlord's evidence contains screenshots from a video of the incident on December 3, 2023 taken from a camera in the hallway near to R.I.'s rental unit. I was told that the Landlord also included the video itself, though that was not included in the evidence provided to the Residential Tenancy Branch.

The photographs show a man, presumably the Tenant, speaking to another tenant, presumably R.I., in the hallway in front of a rental unit. Three pictures show the man putting both of his hands on either side of the woman's head and neck, with time stamps for the photographs showing this occurred on three different occasions. Other photographs show the man continue to touch the woman on her shoulders and hip.

The Tenant argued that the photographs submitted by the Landlord were selective and did not provide context for the interaction.

I understand that the incident was reported to the police, but no charges were made. R.I. indicates she spoke with the police, saying that they informed her that they would give the Tenant a warning and would press charges if he spoke with her again. The Landlord's agent says that she also raised the issue with police. The Tenant says that when he spoke with the police, they informed him that no charges would be made after they conducted an investigation, presumably on the basis that there was insufficient evidence to support the charge.

The Landlord's evidence contains written complaints from three other occupants, two of which are in the same letter, describing incidents between them and the Tenant.

One, authored by S.R. and R.B., indicate that the Tenant had kissed them both on the lips and cheeks. They indicate they confronted the Tenant about the incident afterwards, telling them how they felt, and forgave the Tenant his actions. The statement is undated and is unclear when this incident took place.

Another complaint contained in an email dated February 18, 2024 is sent by S.G., another occupant at the residential property, to the Landlord's agent. It indicates that when she moved into her rental unit, the Tenant kept insisting on helping her and her boyfriend move boxes into their rental unit, despite saying they did not need assistance. S.G. describes how during these interactions the Tenant kept patting her back, which she says made her feel uneasy. S.G.'s email indicates that when her boyfriend arrived, the Tenant quickly left.

The email from S.G. details noise issues with the Tenant, him appearing to be intoxicated in common areas, and her attempts to avoid him. It concludes by saying that S.G. plans to vacate as she feels unsafe at the residential property and that she has a fear that Tenant would take advantage if the situation presented itself.

I find the complaint from R.I. with respect to the incident on December 3, 2023 to be well founded. Her testimony was clear, consistent, and devoid of any overstatement or embellishment. I found her to be a credible witness. I further note that her testimony is corroborated by the information contained in the email she sent on December 18, 2023, which itself was drafted immediately after the incident.

R.I. testimony and her email of December 18, 2023 are both confirmed to a large extent of the photographs provided by the Landlord. I accept that the still frame images may lose some context. However, they do confirm touching to the neck, hips, and shoulders, with R.I.'s body language indicating a defensive posture. Coloured by R.I.'s testimony, the images paint a clear picture of what had occurred, which I accept was likely not consensual.

I further note that the impact of the December 3, 2023 incident on R.I., though mentioned by her in her testimony, is also supported by an email her partner, O.C., sent to the Landlord's agent on December 18, 2023. That email describes R.I. being beside herself, feeling violated, and being uncomfortable in the building and unsafe in her home.

The Tenant made the argument that the French, who I note may often kiss one another's cheeks as a form of greeting, would be subject to similar sexual assault or misconduct allegations. I describe this because I find it likely that the Tenant is somewhat more hands-on in his greetings and interactions with others. This is confirmed by the complaints from the three other occupants.

However, this does not excuse the Tenant's conduct. Two of the complaints, R.I. and S.G., both outline a sense of unease in interacting with the Tenant, one of which has left the residential property in part because of him and the other indicating they will do so soon. I accept the unease and anxiety described by both complainants is reasonable under the circumstances.

This underlines the fact that the Tenant's conduct, though perhaps innocent in his mind, is not innocently received. This is not France. Further, given the Tenant's conduct as demonstrated in the photographs from the December 3, 2023 incident, I would not expect his conduct to be acceptable there either.

I find that the Landlord has demonstrated that the Tenant's conduct unreasonably disturbed and significant interfered with other occupants at the residential property. It constituted a significant breach of their right to the quiet enjoyment of their rental, which is protected by s. 28 of the *Act*.

I have also considered the One Month Notice within the context of the protective purpose of the *Act*, namely whether the circumstances warrant ending the tenancy. I note that the Tenant appeared to lack even a basic appreciation that his conduct was problematic, going so far as to argue it was fabricated by the Landlord's agent. I have significant concerns that cancelling the One Month Notice would condone the Tenant's conduct, thereby posing further risks to other occupants at the residential property, in particular S.G. who continues to reside there.

I find that the Landlord has demonstrated the One Month Notice was properly issued.

The Tenant raised a number of arguments that I will address in turn.

The Tenant argued that the current One Month Notice is a continuation of past attempts to evict him. I am told the Tenant was successful in disputing one notice and the Landlord withdrew another. I have been provided a file number from the previous matter, which is noted on the cover page of this decision. I note upon review of the previous matter, it pertains to allegations unrelated to the current notice.

I place little weight in the Tenant's argument that this is merely some attempt to evict the Tenant by way of attrition. As noted above, I accept it likely that the allegations contained in the One Month Notice occurred. I accept the allegations from R.I. in their entirety. The Landlord not only has the right, but arguably a duty, to issue a notice to end tenancy under these circumstances.

The Tenant also argued that there were no charges from police following the complaint, further arguing that it is unusual for the property manager to submit a complaint such that this is evidence of some animus directed by her toward the Tenant. In the Tenant's words, the Landlord's agent is "diabolical".

First, the fact that there was no criminal charge is irrelevant. The police have different criteria in assessing whether to charge someone. I note that the standard of proof on a criminal charge, being proof beyond a reasonable doubt, is different than the civil standard applicable at the Residential Tenancy Branch, meaning something is more likely than not. Again, the Landlord is well within its rights to issue a notice to end tenancy under these circumstances and, as noted above, arguably has a duty to do so in the interests of preserving the rights of the other occupants at the residential property, in particular the rights protected by s. 28 of the *Act*.

Second, I accept that it is unusual for the Landlord's agent to raise the matter with the police. However, I accept that she did so out of concern in the face of serious allegations brought to her by other occupants at the residential property. Even so, there is no evidence to support the Landlord's agent fabricated the Tenant's conduct, which was confirmed by R.I.'s testimony at the hearing.

The Tenant also argued that he is old and has mobility issues such that he is no threat to other occupants. With respect to his physical health, that may be true. The Tenant's evidence contains medical records supporting he has health issues. However, the Tenant's physical health is irrelevant. The allegation is not whether the Tenant is physical threat to others, rather it is whether he did what is alleged by the Landlord. As noted above, I find it likely that he did.

Both parties submitted documents in the nature of character evidence. With respect to this, I find character evidence to be irrelevant. The issue is not whether the Tenant or the Landlord's agent are good or bad people. It is whether the incidents alleged by the Landlord in the One Month Notice occurred and whether that justifies ending the

tenancy. As noted above, I find that the allegations did occur and more than justify the One Month Notice being served.

I dismiss the Tenant's claim to cancel the One Month Notice, without leave to reapply.

Order of Possession

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

As that is the case here, I grant the Landlord an order of possession. Policy Guideline #54 provides guidance on setting the effective date for an order of possession. I find that this has been a relatively short tenancy, though I accept the Tenant has paid rent for April and is older with poorer health. I find it appropriate grant the order of possession effective at 1:00 PM on April 30, 2024.

2) Is the Landlord entitled to the return of its filing fee?

As the Landlord was successful on its application, I grant it its filing fee. I order under s. 72(1) of the *Act* that the Tenant pay the Landlord's \$100.00 filing fee and direct under s. 72(2) of the *Act* that the Landlord withhold this amount from the security deposit it holds in trust for the Tenant.

Conclusion

I dismiss the Tenant's claim under s. 62 of the *Act*, without leave to reapply.

I dismiss the Tenant's claim disputing the One Month Notice, without leave to reapply.

I grant the Landlord an order of possession under s. 55 of the *Act*. The Tenant and any other occupants shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on April 30, 2024**.

I grant the Landlord its filing fee, which is to be paid by the Tenant. I direct under s. 72(2) of the *Act* that the Landlord retain \$100.00 from the Tenant's security deposit in full satisfaction of its filing fee.

It is the Landlord's obligation to serve the order of possession on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court.

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

Dated: April 16, 2024

Residential Tenancy Branch