DECISION

Introduction

The Tenant A.G. files an application seeking 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 February 26, 2024 (the "One Month Notice"); and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord files his own application, claiming against both Tenants, for the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the One Month Notice;
- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

A.G. and N.D. attended as the Tenants. Y.W. attended as the Landlord. The Landlord had the assistance of a translator, who translated English to Mandarin as needed on his behalf. The Landlord also called M.D. as a witness.

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 Application and Evidence

The parties advise that they served their application materials on the other side, barring a video provided by the Landlord that he acknowledges he did not serve on the Tenants. Aside from the Landlord's video, 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, except for the Landlord's video, which shall be excluded as it was not properly served.

Preliminary Issue – Severing Claims from the Applications

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

The main issue in dispute between both applications is whether the One Month Notice is enforceable. Given this, I find that all other claims from the applications are not sufficiently related to issues on the notice to end tenancy's enforceability and are hereby dismissed.

With respect to the Landlord's monetary claims under s. 67 of the *Act*, they are dismissed with leave to reapply regardless of the outcome of the hearing.

With respect to the Tenant's order that the Landlord comply with the *Act*, this claim is only relevant in the event the tenancy is active and ongoing. In other words, should the One Month Notice be enforced, this claim would no longer be relevant. Given this, the Tenant's severed claim under s. 62 of the *Act* may be dismissed with or without leave to reapply depending on whether the notice to end tenancy is enforced.

The hearing proceeded strictly on the issue of whether the One Month Notice is enforceable.

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 his filing fee?

Evidence 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 Tenants moved into the rental unit on April 1, 2022.
- Rent is due on the first day of each month.
- Between April 1 to September 30, rent is due in the amount of $1,250.00 each month.
- Between October 1 to March 31, rent is due in the amount of $1,350.00 each month.
- A security deposit of $600.00 and a pet damage deposit of $400.00 was paid by the Tenants.

There was some dispute whether a written tenancy agreement had been given to the Tenants by the Landlord. The Landlord's evidence contains a written tenancy agreement signed March 29, 2022.

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

The Landlord advises that he personally delivered the One Month Notice to the Tenants on February 26, 2024, which was acknowledged to have been received by the Tenants. Accepting this, I find that the One Month Notice was served on the Tenants on February 26, 2024 in accordance with s. 88 of the *Act*.

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 on March 1, 2024. Accordingly, I find that the Tenant filed to dispute the One Month Notice within the 10-day deadline imposed 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

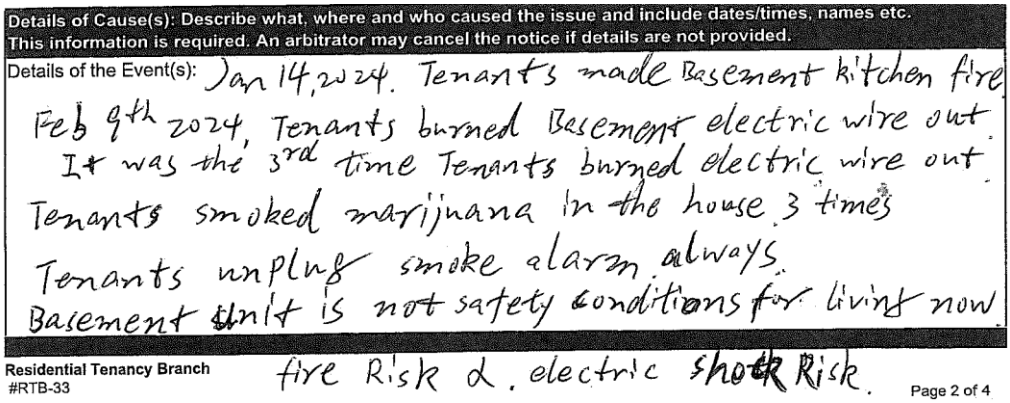
I note that the effective date of the One Month Notice is set as March 27, 2024, which is incorrect as rent is due on the first. Despite this deficiency, I find that it is irrelevant as it is corrected automatically by virtue of s. 53 of the *Act* to March 31, 2024.

Stated Causes for Ending the Tenancy in the One Month Notice

The One Month Notice lists it was issued on the following bases:

- The Tenants or a person permitted onto the residential property by the Tenants has put the Landlord's property at significant risk (s. 47(1)(d)(iii) of the *Act*).
- The Tenants or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit or residential property (s. 47(1)(f) of the *Act*).
- The Tenant has not repaired damage to the residential property, as required under s. 32(3) of the *Act*, within a reasonable time (s. 47(1)(g) of the *Act*).

The Landlord describes the causes for ending the tenancy as follows within the One Month Notice:



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

Details of the Event(s): Jan 14, 2024. Tenants made Basement kitchen fire
Feb 9th 2024, Tenants burned Basement electric wire out.
It was the 3rd time Tenants burned electric wire out.
Tenants smoked marijuana in the house 3 times
Tenants unplug smoke alarm always.
Basement unit is not safety conditions for living now
fire Risk & electric shock Risk.

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At the hearing, the Landlord began to make submissions on issues that were not set out in the description put in the One Month Notice. I did not permit the Landlord to continue to make those submissions on the basis that they were irrelevant to whether the One Month Notice subject to these applications is enforceable.

By way of some context, the *Act* exists to provide certain substantive and procedural rights to landlords and tenants in residential tenancies that would not otherwise exist at common law. It is for this reason that the courts have consistently said that the *Act* has a protective purpose.

Within these circumstances, the Landlord must set out in sufficient detail the basis he is seeking to end the tenancy within the notice itself, which dovetails with the form and content requirement set out under s. 52(d) of the *Act*. The reason this is expected is because it informs the Tenants in their decision to either accept the notice and vacate or file and dispute it, which as described above must be done within 10 days of receiving the notice. The Tenants cannot reasonably complete this task if the notice fails to include all relevant details surrounding why it was issued.

I do not summarize issues that are not specifically mentioned in the One Month Notice as they are irrelevant to the notice itself and are not specifically before me. I do not make comment or findings on these issues.

Kitchen Fire

I am advised by the parties that there was a fire in the kitchen of the rental unit. The Landlord's evidence contains a photograph of the stove, which shows burn marks.

The Tenant A.G. indicates that his son, who lives in the rental unit, was cooking something and inadvertently turned on the wrong heating element. He says that this started the fire, but that it was put out quickly and the damage was limited to the stove and some discolouration of the walls.

The Tenant A.G. further accepted it was his responsibility to repair the kitchen, having done so himself at his expense. The Tenant's evidence contains a video from March 27, 2024 showing the kitchen stove has been replaced and the walls painted. The Landlord acknowledges the Tenants have repaired the kitchen.

I have reviewed the Landlord's photographs as well as the Tenant's video after the repairs. I accept that the Tenant's son damaged the kitchen, but that this has since been repaired. I find that based on the photographs, the kitchen fire, though certainly alarming, was not extraordinary damage the rental unit. It was clearly an accident, one that was put out with enough speed such that the damage was limited and easily repaired by the Tenants.

I find that the Landlord has failed to show the kitchen fire constituted extraordinary damage to the residential property.

The Landlord raised issue with the Tenants undertaking the repairs from the kitchen fire without his authorization. With respect, the Landlord cannot, in my mind, complain of the issue than complain that the Tenants took steps to address the wrong they acknowledge was their fault. Section 32(3) of the *Act* puts the obligation on the Tenants to repair damage caused by them. I find that they did so here.

With respect to putting the Landlord's property at significant risk, I accept the kitchen fire was a significant issue, one that ought not to have occurred. However, the fire, and whether it justifies ending the tenancy, must be considered within the protective purpose of the *Act*. The Tenants have taken responsibility for the kitchen fire, and the associated repairs, in keeping their obligation under s. 32(3) of the *Act*. Accidents do occur and I accept that the seriousness of the issue was not lost on the Tenants, nor their son, such that I accept there is little risk of reoccurrence.

I find that the Landlord has failed to demonstrate the kitchen fire, in itself, put the Landlord's property at significant risk.

I would not uphold the One Month Notice based on the kitchen fire.

Electrical Short

The parties advise that an outlet in the kitchen shorted out, produced sparks, and tripped a circuit breaker.

The Tenant A.G. explains that the fridge was not working properly and investigated a series of outlets in the kitchen. He says that when doing so, he found one of the outlets had sparked, which prompted him to make sure the circuit was off at the electrical panel. A.G. says that he reported the issue to the Landlord immediately.

The Landlord argued that the Tenants undertook unauthorized electrical repairs in the rental unit, including the outlet in question. He says that he took the outlet apart and discovered that a wire used to plug in appliances was in the receptacle. The Landlord's evidence contains a photograph of the wire in question, which shows it to be braided wires with singed black marks on either end.

The Landlord directs me to the Tenant's application, which notes that he had replaced 3 outlets himself. The Tenant acknowledged at the hearing having done so, though says that he merely replaced the outlet, did not install wires, and did not work on the outlet in question. The Tenant made further mention of how some circuits for the rental unit were tied to exterior plugs that provide power to other parts of the residential property.

On the evidence before me, I have insufficient evidence to find the Tenants responsible for the electrical short that occurred in the receptacle in question. I find that the Landlord cannot point to the receptacle that shorted and blame the Tenants as it is just as likely that the wiring in question was done by someone other than the Tenants or their guests.

I note the Tenant admits to undertaking some electrical work in the rental unit, though I accept that he did not work on the receptacle in question, nor did he install wires in any other receptable. I accept that the extent of the work was limited to rewiring new outlets.

Though replacing outlets should not be undertaken by an unqualified person, particularly given the risk of mismatched amperage requirements for a circuit, I find that there is no evidence to support that the Tenant's work is faulty or putting the Landlord's property at significant risk.

I find that the Landlord has failed to demonstrate that the electrical short in question is attributable to the Tenant and that the other electrical work puts the Landlord's property at significant risk.

The Tenant's evidence contains a video of the receptacle in question. I understand that the Landlord has failed to fix the outlet in question as of the hearing. There was some discussion on the extent of work needed to complete the repair, which is not relevant to the One Month Notice itself. However, I do note that open receptacle, with loose wires, is a significant risk to the Tenants and the property, such that I would encourage the

Landlord to undertake the repair in a timely fashion in keeping with his obligation under s. 32(1) of the *Act*.

Smoking in the Rental Unit

The Landlord alleges that the Tenants smoke cannabis and cigarettes in the rental unit, which he says he can smell in the upper portion of the residential property where he resides.

The Tenants deny this, saying that they smoke outside the rental unit as they understand the Landlord does not accept smoking in the rental unit.

The Landlord's witness testified to witnessing the Tenants smoking at the exterior of the residential property.

I find that the Landlord has failed to show the Tenants are smoking inside the rental unit. It appears likely based on the evidence before me that the Tenants are smoking at the exterior of the residential property, which is confirmed by the Landlord's own witness.

It is unclear to me how smoking at the residential property could be considered as putting the Landlord's property at significant risk. There is no risk of property damage, either from burns or cigarette smoke, if the Tenants are smoking outside the rental unit.

The Landlord also spoke of how the Tenants' smoking was disturbing him in his rental unit. However, that is not why the One Month Notice was issued, as stated within the notice itself. It lists three grounds, none of them relate to loss of quiet enjoyment. Given this, I would not uphold the One Month Notice on this basis as it is not listed in the notice.

I find that the Landlord has failed to show the One Month Notice is enforceable with respect to smoking at the residential property.

Unplugging Fire Alarm

The Landlord alleges that the Tenants are removing a plug-in fire alarm. However, there is no evidence provided to support or substantiate that the Tenants are doing so. One of the Tenant's videos refers to the fire alarm being plugged in.

To be clear, landlords are expected to ensure fire alarms are present as required by code, and tenants are expected not to tamper with fire alarms. In this instance, however, I find that the Landlord has failed to demonstrate that the Tenants are removing the fire alarms as there is insufficient evidence to support the allegation.

I would not uphold the One Month Notice on the basis of the fire alarms being tampered with by the Tenants.

Cancellation of the One Month Notice

Given the above, I find that the Landlord has failed to prove that the One Month Notice was properly issued. I therefore grant the Tenant his relief, cancel the One Month Notice, and dismiss the Landlord's claim for an order of possession on the One Month Notice, without leave to reapply.

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

As the Landlord was unsuccessful, I dismiss his claim for his filing fee, without leave to reapply.

Conclusion

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

The Landlord's claim for an order of possession based on the One Month Notice is, therefore, dismissed without leave to reapply.

I dismiss the Landlord's claim for his filing fee, without leave to reapply.

All the relief severed from both applications is dismissed with leave to reapply.

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

Dated: April 23, 2024

Residential Tenancy Branch