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 June 4, 2024 (the "One Month Notice");
- an order pursuant to s. 70 restricting the Landlord's right of entry; and
- return of the filing fee pursuant to s. 72.

The Landlord files its own application seek 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.

D.S.G. attended as the Tenant. D.P. and B.P. attended as agents for 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

Tenant's Application and Evidence

The Tenant advised that she served her application and evidence on the Landlord, which the Landlord's agents acknowledged receiving without issue. Accepting this, I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant's application materials.

Landlord's Application and Evidence

The agent D.P. advised that the Landlord's application and evidence was served on the Tenant via registered mail sent on July 12, 2024. The Tenant acknowledges receipt of the registered mail package, though indicates it only included the Landlord's evidence but no application. The agent D.P. confirmed that the registered mail package contained the application but had not documentary evidence to confirm the same.

Dealing first with the evidence, I accept that it was served in accordance with s. 88 of the *Act* and was received by the Tenant. The Landlord's evidence is included and shall be considered by me.

Dealing next with the Landlord's application, the Landlord ultimately bears the onus of demonstrating its service on the Tenant. In this instance, I find that I cannot determine whether the Landlord's application has, in fact, been served given the conflicting testimony before me.

As the Landlord's application was not served, it is dismissed. Considering that the Tenant's claim to cancel the One Month Notice may lead to an order of possession being issued under s. 55(1) of the *Act*, I find that the entirety of the Landlord's application should be dismissed without leave to reapply. Whether an order of possession flows from the One Month Notice will be determined on the Tenant's application and I do not find the Landlord should be able to reclaim its filing fee given it failed to demonstrate service of its application.

Preliminary Issue – Severing the Tenant's Claims

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 primary issue in dispute on the Tenant's application is whether the tenancy ends or continues based on the One Month Notice.

The Tenant seeks an order under s. 70 of the *Act* to restrict the Landlord's right of entry into the rental unit. Upon review of the application, it is unclear whether the issue raised was strictly an issue with the Landlord's access into the rental unit. I further note that on its face, the claim as pled did not appear to be tied to the issues raised in the One Month Notice.

I canvassed with the Tenant whether there was any link between the One Month Notice and her claim under s. 70 of the *Act*. The Tenant indicated that it was included in the hopes that it could be dealt with if time allowed, though did not indicate that it was necessarily related to the issues raised in the One Month Notice.

The One Month Notice pertains to various grounds and allegations. The Landlord bears the onus of proving those allegations occurred and that the One Month Notice was properly issued.

Given that the Tenant's claim under s. 70 of the *Act* is not related the One Month Notice, I dismiss it under Rule 2.3 of the Rules of Procedure. This claim may be dismissed with or without leave to reapply depending on whether the tenancy ends or continues based on the One Month Notice. Should the tenancy end, the issue of entry would be moot.

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

Preliminary Issue – Amending the Tenant's Application

The Tenant named D.P., B.P., and a limited company as the respondents. I note that the One Month Notice similarly names these three individuals, though the tenancy agreement provided appears to show that the landlord is the limited company.

I canvassed with the parties who the correct landlord was under the tenancy agreement. The Landlord's agents indicate that the residential property is owned by the limited company and they are its owners. They indicate some uncertainty on the naming process as they have not been before the Residential Tenancy Branch.

To be clear, a party's status as a landlord or tenant results from the tenancy agreement itself as these disputes are, at their core, contractual in nature. Parties should use the correct legal spelling for their names in the tenancy agreement, which would then be used in naming parties on an application before the Residential Tenancy Branch.

In this instance, I accept that the limited company is the Landlord as it is named as such under the tenancy agreement. Though D.P. and B.P. may be its owner, the limited company is a distinct legal entity separate from its shareholders. D.P. and B.P. are not parties to the tenancy agreement, rather it is the limited company.

As such, I amend the Tenant's application to correct the parties named such that limited company as named in the tenancy agreement is listed as the sole respondent. It is the Landlord.

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 Tenant entitled to the return of its 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.

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 of the One Month Notice and Form and Content

The agent D.P. advises that the One Month Notice was personally delivered to the Tenant on June 4, 2024. The Tenant acknowledges its receipt as stated by the Landlord's agent. 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 June 4, 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 to dispute the One Month Notice on June 12, 2024. Accordingly, I find that the Tenant filed to dispute the notice within the 10-day period imposed under 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).

Causes Listed in the One Month Notice

The Landlord lists the flowing grounds for ending the tenancy in the One Month Notice:

- Sec 47(1)(d)(i) - The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Sec 47(1)(d)(ii) - The Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Sec 47(1)(e)(i) - 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.
- Sec 47(1)(e)(ii) - The Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the property.

The One Month Notice refers to an attached letter detailing the causes for ending the tenancy. I have been provided with a copy of that letter, which is 4 pages long and outlines various allegations by the Landlord.

Alleged Illegal Activity

Despite what is listed in the One Month Notice, the Landlord's agents made no submissions on what illegal activity the Tenant or her guest is alleged to have undertaken.

The written letter detailing the basis for ending the tenancy attached to the One Month Notice alleges that the Tenant was smoking cannabis in her rental unit and this constituted illegal activity.

The Tenant denies any illegal activity, that there are no allegations of the same, and that she does not smoke in her rental unit, nor does she allow others to do so. The Tenant says that her brother did stay in her rental unit when he was adversely impacted by flooding in 2021 and that he does consume cannabis. However, she emphasized that her brother did not smoke in her rental unit and that smoking cannabis has been legal since 2018.

I find that the Landlord's allegations of illegal activity are entirely without merit. There is simply no evidence to support any illegal activity undertaken in the rental unit. Even if the Tenant's brother smoked cannabis in the rental unit in 2021, it was legal at the time.

Further, I have significant issue with the Landlord citing events that occurred nearly 3 years ago as forming a basis for ending the tenancy. The Landlord cannot simply hold some problem in its back pocket to be deployed to the end the tenancy at some later date.

Finally, the illegal activity must be of a nature that would warrant ending a tenancy. Even if cannabis consumption was illegal at that time, the mere consumption could hardly be considered as an issue that would rise to the level of warranting the end of the tenancy. This is particularly true where the issue arose years ago and the Landlord provided no warning or rose complaint with the conduct when the incident is alleged to have occurred.

Suffice it to say, I would not uphold the One Month Notice on either ss. 47(1)(e)(i) or 47(1)(e)(ii) of the *Act* as the Landlord has failed to demonstrate any illegal activity, much less illegal activity warranting end to this tenancy.

Alleged Disturbances to the Landlord

The agent D.P. advised that the One Month Notice was issued largely in response to an incident that occurred on April 8, 2024 and events following that point.

I am told by the Landlord's agents that the Tenant raised issue with repairs in her rental unit and that B.P. attended the rental unit on April 8, 2024. On that occasion, B.P. says

that the Tenant was taking photographs of his work while he attempted to clean out the bathroom sink. I am told that the Tenant said to B.P. that she felt sorry for him as he had to live with D.P.. B.P. testified that he was quite upset by the comment from the Tenant and that he immediately left the rental unit.

Despite the testimony from the Landlord's agents, the written letter attached to the One Month Notice alleges this incident occurred on April 5, 2024, which appears to be supported by a witness statement contained in the Tenant's evidence. Regardless of when this event occurred, I accept the Landlord's agent B.P. did attend the rental unit on April 5 or 8, 2024 to unclog a sink.

The agent D.P. indicated that following the incident of April 5 or 8, the Tenant sent various letters to the Landlord, and the Landlord provided response. Copies of this correspondence has been put into evidence.

The agents argued the Tenant is disrespectful and that she called Worksafe BC and BC Hydro due to issues she alleges are present in the residential property. With respect to the BC Hydro issue, the agent D.P. says that the report was initiated by flickering lights and the issue was found by BC Hydro to be related to a pool that neighbours the residential property.

The agents argue that the Tenant has been difficult to deal with since an issue arose with her toilet in December 2023. The agent D.P. says that the Tenant's pen was pulled from the toilet and that it caused the obstruction. The Tenant, in her testimony, took issue with the Landlord's request for her to pay for the toilet, which she says was old. She denies causing damage to the toilet.

The Tenant, for her part, denies undertaking any conduct that would warrant ending the tenancy. The Tenant says that she has not harassed other occupants at the residential property or the Landlord's agents. The Tenant indicates that there are repair issues she reported to the Landlord and that the One Month Notice is in response to those repair requests.

The Tenant's evidence contains a copy of the initial repair request made by her in a letter dated April 5, 2024. It outlines 9 issues for repair and that the Tenant hoped they could be dealt with before April 19, 2024. The letter concludes that the Tenant does have the right to apply for an order for repairs with the Residential Tenancy Branch.

In a subsequent letter dated April 8, 2024, the Tenant made repair request for another 10 items. That letter raises complaint that B.P. left the rental unit without cleaning up, that there was the smell of cigarette smoke in the residential property, that there were ants in the residential property, and lights were flickering. The Tenant also extended the deadline for the repairs to April 22, 2024.

The Landlord's response letter of April 12, 2024 outlines that they would attend the rental unit on April 16, 2024 to undertake the repairs, though emphasized that the Tenant could not take photographs of the Landlord's agent while he worked, nor was it appropriate for her to denigrate B.P.'s marriage to D.P..

The Tenant's evidence contains a notice of entry dated April 18, 2024 seeking access on April 19, 2024. The Tenant's evidence contains a witness statement from G.H. who was in the rental unit on April 19, 2024 and did not note any issues during that interaction.

I am told that the Landlord's agent attended the rental unit after April 19, 2024 to repair a leak from the bathroom ceiling fan originating from the bathroom above the Tenant's rental unit. The Landlord's agent D.P. reports that there were no issues from the Tenant on that occasion.

Cancelling the One Month Notice

The Landlord alleges various conduct from the Tenant, all of which centre around events that occurred after the repair visit of April 5 or 8, 2024.

Though I did not summarize each detail of the four-page letter attached to the One Month Notice, it includes allegations that the Tenant harassed, bullied, intimidated, and slandered the agents. At the hearing, the agents took issue with the Tenant taking photographs, hovering over B.P. while he worked, sending demand letters, and having witnesses present while B.P. worked in the rental unit for repairs.

It is evident that the landlord-tenant relationship went south following the incident from December 2023 after the toilet was replaced by the Landlord. The testimony from the Landlord's agents is clear that they believe the Tenant was responsible for the damage. The Tenant, for her part, denies that the issue was caused by her and that the repair ultimately fell under the Landlord's responsibility to maintain and repair the residential property under s. 32(1) of the *Act*.

I do not need to make any determination on who is ultimately responsible for paying for the toilet repair. Though that issue is mentioned in the four-page letter attached to the One Month Notice, the specific ground of alleged extraordinary damage to the rental unit was not indicated on the notice itself. Simply put, the correct box in the One Month Notice was not ticked to put the toilet issue into play as the notice must clearly state the causes for ending the tenancy.

Though not stated by the agents at the hearing, the four-page letter does indicate that the view that the repair requests were "petty complaints" and "petty repairs".

Having reviewed the repair requests contained in the Tenant's letters to the Landlord, I would say that they are not overly significant. It is not as though the Tenant is complaining that there is no heat in the rental unit, or the appliances were non-functional. Rather, it pertains to leaky taps, broken hinges, and cracks in the wall. There is allegation of mould, which may be serious, though it is unclear the extent to the spread of the mould or its presence.

I note that the Tenant's repair request followed shortly after the Landlord's attendance to clear the bathroom sink. Given the issues raised in the Tenant's letters, I suspect the

repair issues did not spontaneously occur and that the request, regardless of whether the repairs were needed, was in response to the ongoing feud.

Both the agent D.P. and the Tenant referred me to an email sent by D.P. to the Tenant on April 4, 2024 in which D.P. says the Tenant would be accountable for the cost of clearing the sink drain if it was from her hair. The Tenant argued that the drain, if it was plugged, was the Landlord's responsibility to repair. With respect, if the drain was plugged by the Tenant's use, she could be responsible for the repair as per s. 32(3) of the *Act*.

It is evident that the Landlord's request for the repair costs to the toilet, the resulting dispute, led to the comment that the Tenant would be accountable if the sink was clogged by the Tenant's hair. I accept that this led to the Tenant hovering over B.P. while he worked in the rental unit on April 5 or 8, 2024.

I do not make findings on whether the Tenant said to B.P. that she felt sorry for him for having to live with D.P. as that is not clear to me based on the evidence in record. The Tenant indicates that she said something to the effect that she felt sorry for B.P. because the residential property was old and required a lot of repairs.

I suspect that some words were exchanged by the Tenant and B.P. on April 5 or 8, 2024, though I do not know precisely what was said. Suffice it to say, I do accept that the exchange was likely somewhat impolite given the wider context of the interactions that occurred up to that point.

I outline the above because I find that both sides have let things get out of hand. The Landlord cannot rightly assert the Tenant is harassing it by making repair requests, even if those requests are mostly for minor repair issues. The allegations in the One Month Notice are disproportionate to what has actually occurred here. I accept that the Landlord's agents have taken issue with the Tenant's conduct, which given the nature of the repair issues raised by the Tenant and the timing they were made was likely the result of this ongoing dispute over the toilet.

I find that both sides have personalized this dispute. Neither the Landlord nor the Tenant need be friends. They should, however, treat each other with respect. That means the Landlord taking repair complaints without characterizing them as petty. In the case of the Tenant, that means taking responsibility for issues caused by her as s. 32(3) of the *Act* clearly contemplates that she could be responsible for damage caused by her actions or neglect.

In any event, the nature of the arguments between the Landlord and Tenant are not sufficient to warrant ending this tenancy. I accept that the Landlord is annoyed by the Tenant. Even if the Tenant is a pain to deal with, provided the repair requests are legitimate, there is no reason to suggest that they would rise to the level of an unreasonable disturbance.

Reporting an electrical issue to BC Hydro, provided it is grounded in a legitimate issue, is not problem. Indeed, based on the agents own testimony it appears there was an

issue from a neighbouring pool that was causing the lights to flicker. That would, in my view, indicate there was some legitimacy to the complaint and the Tenant's actions.

With respect to threats to make application to the Residential Tenancy Branch, that is not a threat. It is a statement of fact. Both the Landlord and Tenant reserve the right to seek an order from the Residential Tenancy Branch.

The Landlord alleges the Tenant has bothered a neighbour due to smoke in the common arears. There is simply no evidence that the Tenant ever spoke to the neighbour and the Tenant raising an issue of cigarette smoke with the Landlord is not an unreasonable complaint or issue.

I find that the Landlord has failed to demonstrate that the One Month Notice was properly issued. Accordingly, I grant the Tenant her relief and cancel the One Month Notice, which is of no force or effect.

I would encourage both the Landlord's agents and the Tenant to treat each other with greater respect in the future. I note that the Landlord's agents attended the rental unit on two occasions since the first visit on April 5 or 8 and that both passed without issue. It is my hope that both sides may conduct themselves similarly in the future.

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

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

Conclusion

I cancel the One Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant is entitled to her filing fee, which shall be paid by the Landlord. The Tenant is directed to withhold $100.00 from rent owed to the Landlord on **one occasion** in full satisfaction of her filing fee.

The Tenant's claim under s. 70 of the *Act*, which was severed at the outset, 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: August 27, 2024

Residential Tenancy Branch