

DECISION

Introduction

This hearing dealt with the Tenant's two Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act). In their first application filed July 1, 2024, the Tenant applied for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

In the Tenant's second application filed July 8, 2024, the Tenant applied for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Tenant BS attended the hearing for the Tenant.

Landlords AK and EL attended the hearing for the Landlords.

Preliminary Issue

Amendment to Landlord's name

At the outset of the hearing, Landlord EL corrected the spelling of their last name. Based on section 64(3)(a) of the Act, I amend the Tenant's application to correct Landlord EL's last name.

Application for Monetary Order

The Tenant applied for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement.

However, as the Tenant was informed during the hearing, this application is refused based on section 59(5)(c) of the Act, because I find that the application does not include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, as is required by section 59(2)(b) of the Act.

The objective of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. Rule 2.5 of the RTB Rules of Procedures requires to the extent that it is possible, the applicant must submit a detailed calculation of any monetary claim being made.

In this case, the Tenant's application indicates that they are seeking \$1,000.00 because:

Landlord disconnected internet since May. Have to go to cafes to use internet for now. trying to get service installed. Will update. Turned off the ac. Front and back sensor lights were disconnected, I use flashlight at night to enter. Landlords keep coming at random times, I am unable to relax and enjoy the place. kitchen is kept dirty with rotten bread with fungus for days

[reproduced as written]

The Tenant submitted a Monetary Order Worksheet; however, it does not breakdown the claimed amount, but rather includes only one line item in the amount of \$34.95. Therefore, I find the Tenant has not provided a detailed calculation or breakdown of their claim and therefore the application does not meet the requirement of section 59(2)(b) to include full particulars.

Based on the foregoing, I find that proceeding with the Tenant's application at this hearing would be prejudicial to the Landlord, as the absence of particulars that set out the Tenant's claim, makes it difficult, if not impossible, for the Landlord to adequately prepare a response. For this reason, as the parties were informed at the hearing, the Tenant's applications for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act is dismissed with leave to reapply.

Unrelated allegation of unpaid rent

During the hearing, the Landlords brought up matters related to unpaid rent. As the parties were advised during the hearing, I have not made any determinations regarding the allegation of unpaid rent as that matter is not properly before me.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant testified that they served the Landlords with one registered mail package that contained the Notice of Dispute Resolution Proceeding document regarding both applications as well as all of their evidence except a single video. After some discussion, the Landlords acknowledged receipt of the same.

Based on the foregoing, I find that the Landlords were served with the Tenant's Proceeding Package which contained the majority of their evidence based on section 89 of the Act.

However, as the Tenant was informed during the hearing, Rule 3.14 of the Rules of Procedure requires that evidence upon which the applicant, in this case the Tenant, wishes to rely at the hearing must be served to the respondent, in this case, the Landlords, not less than 14 days before the hearing. As the video evidence was not served to the Landlords, I find it would not be procedurally fair to the Landlords for me to consider it. For this reason, I have excluded the video evidence from my consideration.

Service of Evidence

The Tenant acknowledged receipt of the Landlords' evidence which was posted to the door of their rental unit on July 28th, 2024. However, the Tenant took issue with the Landlord's service of additional evidence by registered mail. The Tenant testified that they did not receive the Landlord's evidence which was sent to them by registered mail until September 5, 2024, and therefore, did not have sufficient time to review or respond to said evidence prior to the hearing.

The Landlords submitted evidence showing that they served the Tenant with additional evidence by registered mail on August 30, 2024. Based on section 90 of the Act a document served in accordance with section 88 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the earliest, the Landlords evidence could be deemed to have received by the Tenant is September 4, 2024, which is five days before the hearing.

Rule of Procedure 3.15 requires that evidence upon which the respondent wishes to rely must be received not less than seven days before the hearing. In this case, I find that it was not. For that reason and taking into consideration the Tenant's assertion that they did not have sufficient time to respond to the Landlords' additional evidence, I find it would not be procedurally fair to the Tenant for me to consider the Landlords' additional evidence. For this reason, the Landlords' additional evidence which includes the documents titled: Unpaid_Rent_to_date, 1_Letter_summary_of_evidence, Summary_of_unpaid_rent, Attachments_for_letter are excluded from my consideration in this dispute.

Issues to be Decided

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Is the Tenant entitled to an order to suspend or set conditions on the Landlords' right to enter the rental unit?

Is the Tenant entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Is the Tenant entitled to recover the filing fee for this application from the Landlords?

Background and Evidence

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

The parties agree that this tenancy began on May 1, 2023. The Tenant rents a private room in a two-bedroom upper level of a residential property. The second private room has previously been rented to other tenants; however, it is currently vacant. When the second room is rented, the Tenant shares the common areas, such as the kitchen with the other tenant. The Tenant pays monthly rent in the amount of \$900.00 which is due

on the first day of the month. The Landlord did not collect a security deposit from the Tenant and no written tenancy agreement exists.

The Landlords testified that when the Tenant moved into the rental unit, the parties were friends, and they believed they were doing the Tenant a favor for a few months. However, the relationship has since strained and the Tenant refuses to leave.

The Landlords testified that the Tenant has previously agreed to vacate the rental unit, and they have paid expenses such as storage for the Tenant and returned rent to the Tenant on that basis. However, the Tenant has not vacated.

When questioned as to whether the parties signed an agreement to end the tenancy, the Landlords testified that the conversations took place by way of text message. The parties further agreed that the Tenant has continued to pay rent for August and September 2024.

The Tenant acknowledged receipt of the One Month Notice on July 2, 2024, attached to the door of the rental unit. The Tenant applied for cancellation of the One Month Notice on July 8, 2024.

The One Month Notice is submitted into evidence and indicated that it was issued because the 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.

In response to the Tenant's application, the Landlords proceeded first in the hearing. The Landlords testified that the Tenant became very quarrelsome with the previous two tenants with who they share common spaces at the rental unit. The Landlord testified that during a period of particular unrest between the two tenants, they allowed the Tenant to stay in their own home.

The Landlords testified that because of the Tenant's quarrelsome nature, they have lost two tenants from the rental unit. The Landlords testified that because of the Tenant's behaviour, they have not been able to re-rent the second private room in the rental unit and have therefore lost a significant amount of rental income.

The Landlords testified that the Tenant has called the police on the Landlord EL for totally unwarranted reasons and has been verbally abusive toward them.

The Landlords further submitted that the Tenants gave their key to a stranger who entered the rental unit. The Landlords testified that since the key was provided to the stranger, mail belonging to the Landlords has gone missing. The Landlords testified that they have had to change their banking information based on their suspicion that the stranger stole their mail.

In response to the Landlord's testimony, the Tenant testified that they are not a disruptive person and noted that they resided with the first tenant for a year without issue. The Tenant testified that the first Tenant was difficult to live with and on one occasion yelled in their face. The Tenant testified that the second tenant made them feel uncomfortable and made inappropriate comments toward them.

The Tenant conceded that they provided a key to a friend of theirs for the purpose of picking up two packages that would be arriving at the rental unit while they were out of town. The Tenant testified that they made efforts to determine whether their friend inadvertently picked up the Landlords' mail, but to their knowledge, their friend did not.

The Tenant testified that they contacted the police when Landlord EL attended the rental unit and stayed over night. The Tenant alleged that Landlord EL advised them that they would be living there now and made noise through the night with the intention of disturbing the Tenant.

The Tenant applied for an order to suspend or set conditions on the Landlords' right to enter the rental unit. The Tenant testified that there have been several instances where Landlord EL has entered the rental unit unannounced or without providing sufficient notice per the requirements of the Act. The Tenant testified that without a roommate living at the rental property they do not feel safe when the Landlords enter the rental unit without proper notice. The Tenant alleged that Landlord EL has advised them that they believe they have the right to access the rental unit when they please as it is their home. The Tenant alleged that the Landlord has entered the home with strangers who have used the kitchen to eat meals. The Tenant alleged that items have been moved within the rental unit and removed entirely from the rental unit by the Landlord.

In response to the Tenant's testimony, the Landlord testified that since they were contacted by the Residential Tenancy Branch and informed that they are not allowed to enter the rental unit without proper notice, they have followed the requirements of the Act to the letter.

The Landlord testified that they had access to the rental unit when the previous tenants resided without issue, and this only became an issue for the Tenant recently. The

Landlord testified that they are trying to sell their house and alleged that the Tenant has blocked their access without reason.

The Tenant applied for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement. The Tenant revisited much of their previous testimony when discussing this application indicating that they want reasonable notice from the Landlords prior to entering the rental unit. The Tenant testified that they want the Landlord to be respectful of their space and property. The Tenant testified that the Landlord's behaviours have breached their right to quiet enjoyment.

In response, to the Tenant's testimony, the Landlords reiterated that they are following the requirements of the Act prior to entering the rental unit upon the advice of the Residential Tenancy Branch. EL testified that they have only entered the Tenant's private room with permission. EL testified that when they have attended the rental unit, they have brought a cleaner who has tidied up the property for showings. EL testified that they removed an item from the rental unit believing it was a previous tenant's property in error.

Analysis

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

The Tenant acknowledged receipt of the One Month Notice on July 2, 2024, and applied to dispute the One Month Notice on July 8, 2024. Therefore, I find that the Tenant applied within the time frame allowed by section 47 of the Act. I find that the Landlords have the burden to prove that they have sufficient grounds to issue the One Month Notice.

I have considered the positions of the parties, and I acknowledge that the relationship between them has significantly deteriorated in recent months. However, based on the evidence properly before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords have failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

The Landlords allege that the Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The consistent evidence of the parties is that during the course of this tenancy, two additional tenants have resided in the second private room in the rental for varying lengths of time; however, neither continue to reside at the property to date and the second private room is vacant. The Landlord's allege that the Tenant's quarrelsome behaviour caused the two previous tenants to vacate; however, based on the evidence that is properly before me, I find they have provided insufficient evidence to support that the two previous tenancies ended based on significant interference or unreasonable disturbance caused solely by the Tenant.

Moreover, while I acknowledge that the relationship between the Landlords and Tenant has significantly deteriorated over time leading to verbal confrontations and police involvement, I am not satisfied based on the evidence before me that the call to police made by the Tenant was unwarranted given the circumstances. Therefore, I do not accept that the Tenant's call to police amounts to significant interference or unreasonable disturbance to the Landlords.

Moreover, while the Landlords allege that the Tenant provided a key to their residence to a friend to retrieve their mail while out of town, I do not find this behaviour unreasonable. While the Landlords allege that their mail was stolen by the Tenant's friend, I find I have no evidence before me to support this is the case. I accept the Tenant's testimony that they made efforts to determine if the Landlord's mail was inadvertently removed from the property by their friend and I accept that the Tenant has no knowledge as to where the missing mail is currently. I find the Landlords' assertion that the Tenant's friend may be in possession of a key to the rental unit is insufficient to support a reasonable conclusion that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Ultimately, I find the Landlords have provided insufficient evidence to prove the grounds to end this tenancy as listed on the One Month Notice on a balance of probabilities.

Based on the foregoing, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of May 15, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to an order to suspend or set conditions on the Landlords' right to enter the rental unit?

Section 70 of the Act authorizes an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied that the landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the landlord to give 24 hours written notice before entering the rental unit. The arbitrator may authorize the tenant to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

I have considered the testimony and evidence of the parties, and I acknowledge the Tenant's concerns surrounding the Landlords having accessed the common spaces of the rental unit without notice in the past. Importantly, I find in favour of the Tenant that the Landlord may not access the common spaces of the rental unit or the Tenant's private room without providing proper notice to the Tenant based on section 29 of the Act. I make this finding because while I acknowledge that the Tenant agreed to share common spaces with additional tenants at the rental unit, I find this agreement does not extend to sharing common spaces with the Landlords. In my view, free and unauthorized access to the common spaces of the rental unit by the Landlord could amount to a breach of the Tenant's quiet enjoyment under section 28 of the Act.

With that said, I find the Landlords have provided consistent and credible testimony and evidence that since having been informed of their obligations based on section 29 of the Act, they have complied.

For that reason, I decline to grant the Tenant an order to suspend or set conditions on the Landlord's right to enter the rental unit but rather order the Landlord to continue to comply with section 29 of the Act.

For ease of reference, based on section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The notice of entry may be served in any manner listed in section 88 of the Act and must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to

send the notice by mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

The Landlords are cautioned that any further breach of section 29 of the Act could lead to a further application to suspend and set conditions on their right to enter the rental unit and this decision may be used as evidence to support an order against the Landlords.

The parties may wish to review *Residential Policy Guideline 7: Locks and Access* for further information regarding their rights and responsibilities regarding the same.

For the above reasons, the Tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act is dismissed without leave to reapply.

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Although I have not granted an order to suspend or set conditions on the Landlords' right to enter the rental unit for the above noted reasons, I order the Landlords to comply with section 29 of the Act regarding their obligations to provide the proper notice of entry into the rental unit, which includes the common area.

For the above reasons, the Tenant's application under section 62 of the Act for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is granted.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their applications, I find that they are entitled recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the Tenant may withhold \$100 from **ONE** future payment of rent.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is granted.

This tenancy shall continue until such time as it is ended in accordance with the Act.

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed with leave to reapply.

The Tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act is dismissed without leave to reapply.

The Landlords are ordered to comply with section 29 of the Act.

The Tenant may withhold \$100.00 from **ONE** future payment of rent.

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: September 16, 2024

Residential Tenancy Branch