

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of One Month Notices to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for each application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- Orders of Possession based on the two One Month Notices under section 47 of the Act
- authorization to recover the filing fee for each application from the Tenants under section 72 of the Act

Tenant B.S., lawyers R.P. & Z.M., and legal advocate W.B. attended the hearing for the Tenants.

Landlord H.P.Y. attended the hearing for the Landlords.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

Applications ending in 2191 and 3832

The Landlord testified that he received the Proceeding Packages and evidence from the Tenants and had sufficient time to review it.

The Tenants testified that they received the Landlord's response evidence.

I find the Proceeding Packages and evidence were served in accordance with sections 88, 89 and 90 of the Act.

Applications ending in 3241 and 4633

The Tenants testified that they received the Proceeding Packages and evidence from the Landlord and had sufficient time to review it.

The Landlord testified that he received the Tenants' response evidence.

I find the Proceeding Packages and evidence served in accordance with sections 88, 89 and 90 of the Act.

Issues to be Decided

Should the One Month Notices be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recover the filing fees for their applications from the Landlord?

Is the Landlord entitled to recover the filing fees for his applications from the Tenants?

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 Landlord and the Tenants agreed that the tenancy began on November 1, 2017 with a monthly rent of \$2,600.00 and a total security and pet damage deposit in the amount of \$3,800.00.

One Month Notice dated July 15, 2024

The parties agreed that the One Month Notice dated July 15, 2024 was posted on the Tenants' door on July 15, 2024 and was seen by the Tenants the same day.

The Landlord provided testimony and evidence regarding each section that was checked off on the One Month Notice as follows:

- The Landlord alleged the Tenants significantly interfered with or unreasonably disturbed another occupant or the landlord by putting up unauthorized cameras that are pointing to neighbouring properties. The Landlord stated that these cameras breach the privacy of the neighbours and therefore disturb the Landlord.
- The Landlord alleged the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord by putting up cameras he did not authorize to engage in illegal activity.

- The Landlord alleged the Tenants put the Landlord's property at significant risk through the use of cameras as the neighbours will now sue the Landlord for breach of privacy. He added that the Tenants are also recording audio along with video.
- The Landlord alleged the Tenants have engaged in illegal activity.
- The Landlord alleged that the Tenants have not done required repairs of damage to the unit as the Tenants put holes through the walls to put up cameras and pass all the wiring.
- The Landlord alleged the Tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so as they are invading privacy of the neighbours, have failed to remove the cameras, and are using the rental unit for a purpose other than residential use as allowed for in the lease.

The Tenants testified that they have two functioning cameras, one of which is on the doorbell while the other is on the windowsill of the first floor. They explained that the cameras were installed as the tenant's mother was injured in a fall and has a mobility related disability. The doorbell camera helps her as she can communicate with whoever is outside without moving. The Tenants added that the other camera overlooking the driveway was installed as there were three break ins into their cars in 2022.

One of the Tenants' neighbours from across the street, D.Y., attended the hearing as a witness. He testified that he had no issues with the Tenants' cameras.

One Month Notice dated July 30, 2024

The parties agreed that the One Month Notice dated July 30, 2024 was posted on the Tenants' door on August 1, 2024 and was seen by the Tenants the same day.

The Landlord provided testimony and evidence regarding each section that was checked off on the One Month Notice as follows:

- The Landlord alleged the Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord as one of the Tenants, B.S., is operating an immigration consultancy as well as alcohol related business, making the landlord liable to her clients and to the neighbours. The Landlord made further submissions related to the presence of a camera on the property. Moreover, the Landlord stated that B.S. is using the rental unit for business when the lease says it is only for residential purposes. The Landlord submitted evidence of websites/online advertisements connecting B.S. to these businesses, with the address of the rental unit mentioned.

- The Landlord alleged the Tenants put the landlord's property at significant risk as B.S.'s businesses make the property subject to police investigation. Moreover, the Landlord argued they would be liable to the B.S.'s clients and the Landlord's reputation is blemished due to the alleged illegal activity at the rental unit.
- The Landlord alleged the Tenants have engaged in illegal activity that has or is likely to damage the Landlord's property as unsatisfied customers of either business could come to the rental unit to confront B.S. and could cause damage to the property. Moreover, the Landlord stated that based on Richmond bylaws, the business should be in the city center and not at home. The Landlord also alleged the Tenants could be selling alcohol without proper permits and therefore he could suffer a loss due to fines and an increase in insurance premiums.

The Tenants testified that B.S. became an immigration consultant in 2018 and that she worked from home. The Tenants provided the address of the rental unit for the immigration license. B.S. stated that she never met any clients at the property or in person, and all her dealings with clients were online.

B.S. stated that she does not sell any barrels or alcohol and does not know why a website suggests otherwise.

Analysis

Should the One Month Notices be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 40 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 40 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.

One Month Notice dated July 15, 2024

Based on the testimony of the Tenants, I find that they received the One Month Notice on July 15, 2024, the same day it was served. The Tenants had 10 days to dispute the One Month Notice or they would be conclusively presumed to have accepted the One Month Notice. The Residential Tenancy Branch's records show that the Tenants applied for dispute resolution on July 25, 2025, within 10 days of receiving the One Month Notice. Therefore, the Tenants are not conclusively presumed to have accepted the end of the tenancy per section 47(4) of the Act and consideration needs to be given to whether the One Month Notice should be upheld.

The Landlord alleged the Tenants significantly interfered with or unreasonably disturbed another occupant or the landlord by putting up unauthorized cameras that are invading

the neighbours privacy. However, I find that such a basis is insufficient as the neighbours are not occupants or the Landlord as defined by section 1 of the Act.

The Landlord also provided several other reasons for the issuance of the One Month Notice, all of which fail. I find these grounds to be insufficient as the Landlord failed to establish how the health or safety or lawful right of an occupant or the Landlord was impacted.

I find that the Landlord's fear of being sued does not amount to the Tenants putting the property at significant risk as required by the One Month Notice.

Further, the Landlord failed to establish how the Landlord's property is likely to be damaged or how the quiet enjoyment, security, safety or physical well-being of another occupant of the property is adversely affected. The Tenants have not engaged in any illegal activity as contemplated by the Policy Guideline #32. Therefore, I find the Landlord also failed to establish this basis.

I find no evidence that the Tenants damaged the property. The Tenants evidence demonstrated that the cameras being used are battery and Bluetooth operated for which no wiring is needed. Therefore, I find that that Landlord failed to establish this basis.

I find that the use of the cameras does not change the purpose for which the Tenants are using the rental unit. Therefore, I find the Landlord has also failed to establish this basis.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenants and obtain an end to this tenancy.

Therefore, the Tenants' application is granted for cancellation of the One Month Notice under section 40 of the Act.

The One Month Notice of July 15, 2024 is cancelled and of no force or effect. Therefore, the Landlord is not entitled to an order of possession in relation to this One Month Notice.

One Month Notice dated July 30, 2024

Based on the testimony of the Tenants, I find that they received the One Month Notice on August 1, 2024, the same day it was served. The Tenants had 10 days to dispute the One Month Notice or they would be conclusively presumed to have accepted the One Month Notice. The Residential Tenancy Branch's records show that the Tenants applied for dispute resolution on August 6, 2024, within 10 days of receiving the One Month Notice. Therefore, the Tenants are not conclusively presumed to have accepted the end of the tenancy per section 47(4) of the Act and consideration needs to be given to whether the One Month Notice should be upheld.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenants and obtain an end to this tenancy. There is no evidence that the Tenants have engaged in any of the behaviours alleged by the Landlord in the notice dated July 30, 2024. The Tenants testimony was detailed and consistent. I find no evidence of any illegal activity, or that their work-from-home business jeopardized their tenancy.

Therefore, the Tenants' application is granted for cancellation of the One Month Notice under section 40 of the Act.

The One Month Notice of July 30, 2024 is cancelled and of no force or effect. Therefore, the Landlord is not entitled to an order of possession in relation to this One Month Notice. This tenancy continues until it is ended in accordance with the Act.

Are the Tenants entitled to recover the filing fees for their applications from the Landlord?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$200.00 in filing fees paid for their two applications under section 72 of the Act.

Under section 72 of the Act, I allow the Tenants to retain \$200.00 from one future rent payment.

Is the Landlord entitled to recover the filing fees for his applications from the Tenants?

As the Landlord was not successful in his applications, the Landlord's applications for authorization to recover the filing fees from the Tenants under section 72 of the Act are dismissed, without leave to reapply.

Conclusion

The Tenants' applications are granted for cancellation of both the One Month Notices under section 40 of the Act.

The One Month Notice of July 15, 2024 is cancelled and is of no force or effect.

The One Month Notice of July 30, 2024 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The Tenants are entitled to a return of their application fees. The Tenants may withhold \$200.00 from a future rent payment on **ONE** occasion in full satisfaction of the filing fees.

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: October 22, 2024

Residential Tenancy Branch