

DECISION

Introduction

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

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) dated July 17, 2024, and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- cancellation of the Landlord's One Month Notice September 13, 2024, dated July 17, 2024, under section 47 of the Act
- authorization to recover the filing fee for both applications from the Landlord under section 72 of the Act

and the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a One Month Notice under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served with the first Proceeding Package on September 11, 2024, the fifth day after it was sent by Registered Mail, in accordance with sections 89(1) and 90 of the Act.

I find that the Landlord was served with the second Proceeding Package on September 30, 2024, the third day after it was left in their mailbox, in accordance with sections 89(1) and 90 of the Act.

The Landlord confirmed receipt of both Proceeding Packages.

I find that the Tenant was served with the Proceeding Package on September 15, 2024, the third day after it was attached to their door, in accordance with sections 89(2) and 90 of the Act. The Tenant confirmed receipt of the Proceeding Package.

Service of Evidence

I find that the Landlord was served with evidence on October 1, 2024, the day the Landlord confirms having received evidence in their mailbox, in accordance with section 88 of the Act.

I find that the Tenant was served with evidence on September 15, and October 6, 2024, the third day after it was attached to their door, in accordance with sections 88 and 90 of the Act. The Tenant confirmed receipt of the evidence.

Issues to be Decided

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

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

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

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

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 September 15, 2015, and that an updated tenancy agreement was signed July 1, 2019. Current monthly rent is \$822.00 due on the first day of the month and the Landlord holds a security deposit in the amount of \$405.00.

The parties have appeared repeatedly before the Residential Tenancy Branch. The present dispute is with respect to two One Month Notices issued by the Landlord on July 17, 2024 (effective August 31, 2024), and September 13, 2024 (effective October 31, 2024).

At the time the first One Month Notice was issued, the parties were engaged in a dispute with a pending resolution. The Tenant applied to cancel the One Month Notice dated July 17, 2024, on July 30, 2024, but was unable to process his application until the outstanding decision was rendered. The previous matter was resolved August 16, 2024, and the application was processed August 30, 2024.

The Tenant applied to cancel the second One Month Notice dated September 13, 2024, on September 22, 2024.

I am told that both notices disclosed identical causes. However, only the One Month Notice dated July 17, 2024, was provided in evidence. The notice says that the Tenant is repeatedly late paying rent and that the Tenant has unreasonably disturbed another occupant, specifically by making noise and wasting electricity. The notice also refers to a garage which the Landlord claimed the Tenant destroyed.

The One Month Notice does not define the noise attributed to the Tenant. The Landlord said that the Tenant runs a heating and cooling device year-round which another tenant finds disruptive. The Landlord said that in addition to noise, the heating and cooling device wastes electricity, the cost of which is shared by other tenants and the Landlord. The Landlord said that the Tenant leaves a front light and TV on when not home, which she considers unnecessary and wasteful. The Landlord provided evidence of three specific dates that the heating and cooling device was on: November 19, 2023, and February 28 and June 6, 2024. Evidence of the lights and TV left on was from previous years (2022 and 2023).

The One Month Notice says the Tenant has been late paying rent ten times. The Landlord submitted a record of late payments occurring since 2020, two of which occurred in the last year in January and February 2024. The document refers to arrears which are the subject of Court of Appeal proceedings and were not considered in this hearing.

For the late payments of January and February 2024, the Tenant provided cheques to the Landlord for rent on December 20, 2023 (for January 1, 2024), and January 20, 2024 (for February 1, 2024). The Landlord did not deposit those or subsequent cheques until June 2024 however. When she deposited six months of rent at one time, the cheques dated December 20, 2023, and January 20, 2024, were returned for insufficient funds. The Landlord issued a 10 Day Notice to End Tenancy in response and the Tenant paid those arrears within the five-day period.

With respect to damage to the garage that the Landlord attributes to the Tenant, the Landlord submitted a photo of mold around a window and said that the garage was damp because the Tenant left the garage door open.

The Landlord said that she provided the Tenant with written warning about his conduct by email. She did not submit a copy of this email in evidence and could not recall the specific date or content of the email. She estimated that the warning was before March 1, 2024, because she received a reply from the Tenant on March 1, 2024, which was submitted in evidence.

In this email the Tenant says that the heating and cooling device only runs when the indoor temperature is above or below 20 degrees Celsius and that it is on a timer to turn off at 10:00 pm on weekdays and between 11:00 pm and 12:00 am on weekends as a courtesy. He says that the noise of the device is 52 decibels.

The Landlord submitted three nearly identical letters dated January 17, February 2, and April 3, 2023. These letters refer only to the issue of wasted electricity with respect to lights and TV being left on. The letters say that the Tenant will be required to share the cost of utilities (which are presently included in the monthly rent under the tenancy agreement) if he does not turn off the lights and TV when he is not home.

In response to the Landlord's evidence and the One Month Notice, the Tenant said that the issue of noise has been decided by a previous Residential Tenancy Branch decision, the file number of which is noted on the cover page of the decision.

With respect to electricity, he says that he does not run the heating and cooling device simultaneously with the indoor heating unless it is a particularly cold day. He said in his written submissions that the front light which is left on is solar powered and that while he did previously leave a TV on in his garage to deter theft, he has not done so in the past year.

With respect to repeated late payment of rent, the Tenant said this is a mischaracterization of the circumstances. He said that he does not keep more than \$5,000.00 in his chequing account at one time. He said that he repeatedly inquired of the Landlord why his rent cheques had not been deposited and asked her to tell him when she intended to do so, so that he could move the appropriate funds to the account. She did not tell him and two of the cheques were returned, however he promptly paid the arrears when notified.

He denies responsibility for the damage to the garage and says that repairs needed for the garage are the subject of a future hearing scheduled before the Residential Tenancy Branch. He submitted photographs of the exterior of the garage which demonstrate moisture.

Analysis

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

Section 66 of the Act states that an arbitrator may extend a time limit established by the Act only in exceptional circumstances but must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I find the nature of these repeated applications exceptional and that the Tenant was prevented from applying to dispute the One Month Notice date July 17, 2024, within the period provided under the Act. As the application was completed on August 30, 2024, and this is before the effective date of August 31, 2024, I find that the Tenant is entitled to more time to cancel the Landlord's One Month Notice date July 17, 2024.

Should the Landlord's One Month Notices be cancelled? If not, is the Landlord 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.

As said above, I find the Tenant is entitled to more time to cancel the Landlord's One Month Notice and find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

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

Repeated Late Payment of Rent

Residential Tenancy Policy Guideline 38 says that three late payments are the minimum number sufficient to justify ending a tenancy for repeated late payment of rent. While late payments need not be consecutive, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late. Further, in exceptional circumstances, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

I find that only the January and February 2024 late payments can be relied on by the Landlord. Prior to these missed payments, the Tenant had not paid rent late, according to the record provided, since March 2023. I find that the circumstances of the Landlord depositing the cheques months after they were received to be exceptional and that the Landlord has not established a pattern of repeated late payment by the Tenant.

Unreasonable Disturbance to Another Occupant

I find that the noise attributed to the Tenant has been addressed in a previous decision of the Residential Tenancy Branch dated June 28, 2024. While the Landlord suggests the noise on this notice is different than that of the previous notice, I am told by both parties that the heating-and-cooling device is run year-round, including at the time that the previous notice was issued. The sound of the machine cannot be isolated from the cumulative noise attributed to the Tenant and their other daily activities complained about by the neighbouring tenant.

The June 28, 2024, decision cancelled the Landlord's previous One Month Notice which was issued on this basis. The arbitrator found that the decibel readings submitted by the Landlord in their evidence indicated a normal level of noise and that the Landlord had

not presented evidence of any noise disturbance beyond the normal sounds of daily life, and I note especially so in a multi-unit dwelling of this nature.

With respect to use of electricity, I find it unreasonable for the Landlord to impose restrictions on the use of the Tenant's heating-and-cooling device and that there is nothing in the tenancy agreement to suggest its use should be restricted. The Tenant was compelling in his evidence that he has self-imposed reasonable restrictions on the device and that he uses it only to maintain a comfortable, consistent temperature within the unit. Further, the Landlord alleges this disturbs other tenants who share the cost of the utilities, but the Tenant is not responsible for the allocation of those costs or the terms of the other tenancy agreements. The tenancy agreement relevant to this dispute includes the cost of electricity and pre-dates the new agreements with other tenants.

Further, the Landlord did not provide compelling evidence that the heating-and-cooling device was used unreasonably, asserting only three specific times that it was used in the past year. There were also no specific warnings about its use or how in the Landlord's view it should be properly used.

Damage to the Garage

I find that the Landlord failed to establish that the Tenant was responsible for the mold in the garage and further, failed to establish that if he was responsible that that would be grounds for eviction.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice dated July 17, 2024, under section 47 of the Act.

The One Month Notice of July 17, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

With respect to the One Month Notice dated September 13, 2024, I have not been provided with the complete notice. Section 52 of the Act requires a determination be made that a Notice to End Tenancy meet certain form and content requirements to be enforceable and for that reason am unable to uphold it. Further, I am told that it is identical in content to the One Month Notice dated July 17, 2024, which as said above I have found deficient in establishing sufficient grounds to end the tenancy.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice dated September 13, 2024, under section 47 of the Act.

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 the Tenant is entitled to recover the \$100.00 filing fee paid for each application under section 72 of the Act.

Pursuant to section 72(2) of the Act, I order that the Tenant deduct \$200.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notices dated July 17, and September 13, 2024, under section 47 of the Act.

The One Month Notice of July 17, 2024, is cancelled and is of no force or effect.

The One Month Notice of September 13, 2024, is cancelled and is of no force or effect.

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

I authorize the Tenant to deduct \$200.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

The Landlord's application is dismissed in its entirety, without 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: October 31, 2024

Residential Tenancy Branch