

## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The Tenant applied for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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

The Landlord applied for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the Act
- an Order of Possession based on an uninhabitable rental unit and frustrated tenancy agreement pursuant to section 44 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act

Tenant FA attended the hearing for the Tenant.

SX attended the hearing for the corporate Landlord.

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

As both parties were in attendance, I confirmed that there were no issues with service of the parties' Notice of Dispute Resolution Proceeding packages. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

## **Preliminary Matters**

### *Amendment*

At the outset of the hearing, the parties confirmed that the corporate landlord should be named WTLF and not WTL as indicated in the Tenant's application. Based on section 64(3)(a) of the Act, I amend the Tenant's application to the correct name of the corporate landlord.

### *Unrelated claims*

*Residential Tenancy Branch Rules of Procedure*, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

In this case, aside from the Tenant's application to cancel the Notice to End Tenancy and the Landlord's application for an Order of Possession based on the Notice to End Tenancy, I am exercising my discretion to dismiss the parties claims which are unrelated these issues. Accordingly, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement and the Landlord's application for an Order of Possession based on an uninhabitable rental unit and frustrated tenancy agreement are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

## **Issues to be Decided**

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

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

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

## **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 agreed that this tenancy began on February 1, 2020. Monthly rent is \$1,539.00, due on the first day of the month. The Landlord collected a security deposit in the amount of \$700.00 which they continue to hold in trust.

The Tenant acknowledged receipt of the One Month Notice attached to the door of their rental unit on July 31, 2024. The Tenant applied for cancellation of the One Month Notice on August 9, 2024. The Tenant submitted a copy of the One Month Notice into evidence.

The Tenant testified that the One Month Notice they submitted into evidence is the only One Month Notice they received from the Landlord attached to their door on July 31, 2024. The Tenant noted that the Landlord's evidence contains a One Month Notice that includes different information in the Details of Cause section of the Notice.

The Landlord testified that they attached two One Month Notices to the door of the rental unit on July 31, 2024. The Landlord testified that shortly after they attached the first notice to the Tenant's door, they realized it was gone and possibly missing, so they issued a second One Month Notice. The Landlord testified that they wanted to be sure that the Tenant received the One Month Notice and acknowledged the details section in the second notice issued varied slightly from the first notice. The Landlord testified that the version of the One Month Notice that the Tenant submitted into evidence is the second notice they placed on the Tenant's door on July 31, 2024.

The Landlord testified that both notices were issued for the same reason, namely that the Tenant or person permitted on the property by the tenant has put the landlord's property at significant risk.

The Landlord testified that the Tenant gave their key to the building to an unauthorized person allowing them access to the rental building thus putting the landlord's property at significant risk. The Landlord testified that the building caretaker located the person in the storage locker on July 31, 2024, and asked them how they obtained the building key. The Landlord testified that the person showed the caretaker the Tenant's phone number in their cell phone. The Landlord testified that they believe the person had been living in the locker. The Landlord noted that the caretaker had seen the person in the building for a couple of months.

The Landlord drew my attention to a text message conversation which is submitted into evidence. The Landlord testified that they obtained the unauthorized person's phone number and texted them on August 15, 2024, asking for the return of the building key. The text message shows that the person responded indicating that they do not have the building key and attended the storage locker to assist the Tenant with some boxes.

The Landlord's evidence also contains a statement from the caretaker regarding the incident on July 31, 2024.

In response to the Landlord's testimony, the Tenant testified that the unauthorized person is a friend of theirs that was assisting them in arranging some boxes in their storage locker. The Tenant testified that their friend does not speak fluent English and was therefore unable to explain this to the caretaker on July 31, 2024. The Tenant denied giving the unauthorized person or any other person a key to the building. The Tenant testified that they have valuable items in their storage locker and therefore, it does not make sense that they would want unauthorized people in their storage locker. The Tenant testified that the storage locker is very small, and it is unlikely someone could live in it. The Tenant denied the Landlord's allegation that they put the landlord's property at significant risk.

## **Analysis**

### **Should the Landlord's One Month Notice 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.

The Tenant acknowledged receipt of the One Month Notice on July 31, 2024, and applied to dispute the One Month Notice on August 9, 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 Landlord may have issued two One Month Notices to End Tenancy on July 31, 2024. However, I accept the uncontested evidence of the Tenant that they only received the version of the One Month Notice that they submitted into evidence. I find this is consistent with the Landlord's belief that the first notice may have gone missing and the reason for which they issued the second notice. On that basis I find the One Month Notice submitted into evidence by the Tenant is the only One Month Notice that was served to the Tenant and the only One Month Notice that is properly before me for consideration in this dispute.

The One Month Notice indicates that it was issued because the Tenant or person permitted on the property by the Tenant put the Landlord's property at significant risk. The Details of Cause section of the One Month Notice states the following:

State of the Evidence.

The unit 111 Tenant rented out the building locker room to homeless people which cause the significant risk to the property and other tenant especially the woman and kids in the building.  
Reported to RCMP, file # 24-25923 on 2024 July 31.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, for the reasons set out below, I find that the Landlord has failed to meet the burden which is upon them to prove that they have sufficient grounds to issue the One Month Notice and obtain an end to this tenancy.

I acknowledge the Landlord's concern that an unauthorized person was given access to the storage locker by the Tenant, and I accept this may have been the case. However, I find the Landlord has not proven the allegation on a balance of probabilities that the Tenant gave an unauthorized person a key to the building for the purpose of authorizing that person to reside in the storage locker and that an unauthorized person was in fact residing in the storage locker. Furthermore, I find the Landlord has not satisfied me that the unauthorized person or any other unauthorized person is currently in possession of a building key that was provided to them by the Tenant such that I could determine that the Tenant put the Landlord's property at significant risk or that the Landlord's property is currently at significant risk.

Importantly, the Landlord's documentary evidence shows that the storage locker in question was empty within two days of the occurrence on July 31, 2024. Furthermore, the Landlord has not alleged that there have been any further incidents with the unauthorized person or any other unauthorized person since the One Month Notice was issued.

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.

Therefore, 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. Accordingly, the Landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act is dismissed without leave to reapply.

The One Month Notice of July 31, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

**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 Tenant under section 72 of the Act is dismissed, without leave to reapply.

**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 filing fee paid 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.

The One Month Notice dated July 31, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act is dismissed without leave to reapply.

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

The Landlord's application for an Order of Possession based on an uninhabitable rental unit and frustrated tenancy agreement pursuant to section 44 of the Act is dismissed with leave to reapply.

The Landlord's application for authorization to recover the filing fee paid for this application is dismissed without leave to reapply

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act 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: October 1, 2024

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Residential Tenancy Branch