DECISION

Introduction

The Tenant seeks an order pursuant to s. 47 of the *Residential Tenancy Act* (the "*Act*") cancelling a One-Month Notice to End Tenancy for Cause signed on October 1, 2024 (the "One Month Notice").

The Landlord files his own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after serving the One Month Notice; and
- return of the filing fee pursuant to s. 72.

M.F. attended as the Tenant. The Tenant was represented by J.M., who spoke on her behalf as her advocate.

G.V. attended as the Landlord. The Landlord called a witness, S.B., who was called upon to provide testimony but did not otherwise participate in the hearing.

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 Application and Evidence

The Tenant's advocate indicates that the Landlord was served with the Tenant's application and evidence by way of email sent on October 21, 2024. The Landlord acknowledges receipt of the Tenant's evidence, though denies receipt of the Tenant's application saying he received it after contacting the Residential Tenancy Branch directly on October 17, 2024.

Looking to the Tenant's evidence, as the Landlord acknowledges its receipt, I find under s. 71(2) of the *Act* that the Landlord was served with the Tenant's evidence, receiving it on October 21, 2024.

With respect to service of the Tenant's application, I find that I have insufficient evidence to support that the Landlord was served by way of email sent on October 21, 2024. I do not have a copy of the original email, which would enable me to confirm whether it was included as an attachment.

The Tenant's claim rests upon a filing deadline imposed by s. 47(4) of the *Act*, which means the Tenant must file to dispute the One Month Notice within 10 days of its receipt and failing which she is would be deemed to have accepted the end of the tenancy as per s. 47(5).

I note that the Landlord has filed his own application seeking an order of possession based on service of the One Month Notice. In other words, the Landlord was required to prepare in advance of the hearing, he received the Tenant's evidence, and, in any event, did receive the Tenant's application, albeit indirectly from the Residential Tenancy Branch.

I find that there is significant prejudice to the Tenant should her application be dismissed for want of service, whereas there is little to no prejudice to the Landlord from a procedural perspective should the Tenant's application be considered. Accordingly, despite the Tenant's apparent failure to serve her application, I find that it should be considered, and the hearing proceed on both applications before me.

The Landlord advised that he served his application and evidence on the Tenant, which the Tenant's advocate acknowledges having received without issue. Accepting this, I find under s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord's application materials.

Preliminary Issue – Correcting the Spelling of the Landlord's Name

The Landlord notified me during the hearing that the Tenant misspelt his name on her application and that the rental unit address listed in the Tenant's application is also incorrect. Review of the written tenancy agreement confirms both these points.

Accepting the Tenant made an error on these two points, I find it appropriate to amend her application such that the spelling of the Landlord's name corresponds with the way he named himself in his own application and to correct the unit number for the rental unit.

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 Landlord entitled to the return of his 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.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on December 1, 2019.
- Rent of $1,055.70 is due on the first day of each month.
- A security deposit of $500.00 was paid by the Tenant.

As noted above, I have been given a copy of the written tenancy agreement.

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 Landlord advises that the One Month Notice was posted to the Tenant's door on October 1, 2024. The Tenant acknowledges receiving the notice the same day. Accepting this, I find that the One Month Notice was served on the Tenant in accordance with s. 88 of the *Act* and received it on October 1, 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 October 9, 2024. Accordingly, I find that she filed to dispute the One Month Notice within the 10 days permitted to her 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 note that I have been give two copies of a notice to end tenancy for cause, one by the Landlord and the other by the Tenant. Though largely similar, they are slightly different from each other. The Landlord explained that he does not have a copier such that he wrote out the form twice.

With respect to the form, I accept that the one served by the Tenant was the copy she put into evidence. Such that I rely on that form, not the one provided by the Landlord.

I have reviewed the One Month Notice provided by the Tenant. 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

The effective date of the One Month Notice is incorrect. Under s. 47(2) of the *Act*, the Landlord is required to give at least one month's notice with the effective date set the day before rent is due under the tenancy agreement. Since the One Month Notice was

served on October 1, 2024, the effective date of November 1, 2024 is incorrect since the date must be set to the day before rent is due.

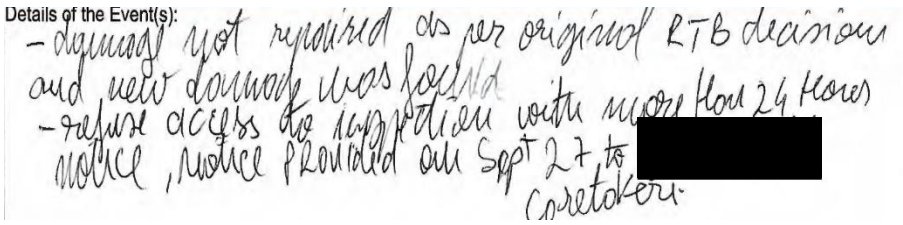
Despite this error, I find the error in the effective date of the One Month Notice does not invalidate the form and content requirements set by s. 52 of the *Act* since the effective date is automatically corrected to November 30, 2024 by application of s. 53 of the *Act*.

Submissions

The One Month Notice lists that it was issued for the following reasons:

- The Tenant has allowed an unreasonable number of occupants in the rental unit (s. 47(1)(c) of the *Act*).
- The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk (s. 47(1)(d)(iii) of the *Act*).
- 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 (s. 47(1)(e)(i) of the *Act*)
- The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit (s. 47(1)(f) of the *Act*).
- The Tenant has not done required repairs to the rental unit as required under s. 32(3) of the *Act* within a reasonable time (s. 47(1)(g) of the *Act*).
- The Tenant has failed to comply with a material term of the tenancy agreement and not corrected it within a reasonable time after receiving written notice from the Landlord to do so (s. 47(1)(h) of the *Act*).

In describing the basis for ending the tenancy, the Landlord states the following in the One Month Notice:


Details of the Event(s):
- drywall not repaired as per original RTB decision and new damage was found
- refuse access for inspection with more than 24 hours notice, notice provided on Sept 27 to [redacted] caretaker.

I have redacted personal identifying information from the reproduction above in the interest of their privacy.

The Residential Tenancy Branch decision referred to in the One Month Notice was put into evidence by the Landlord. The file number for the previous matter is noted on the cover page of this decision.

The previous decision, dated August 12, 2024, is in the form of a settlement agreement. In general terms, the Landlord agreed to withdraw a previous notice for cause and the Tenant agreed to undertake certain repairs if she was found to be responsible and repairs to the drywall by September 30, 2024 in any event.

The Landlord indicates that there were issues with the dishwasher and the freezer for the refrigerator. The Landlord argued the Tenant was responsible for this damage.

The Tenant's advocate indicates that the organization she works for has paid the Landlord back for those repairs. The Landlord confirms the support organization assisting the Tenant did pay him back for the repairs. I note that this was within the contemplation clauses 4 and 5 of the August 12, 2024 settlement.

The Landlord asserts that after the August 12, 2024 decision, he has discovered additional damage to the walls and doors in the rental unit, removal of a toilet seat, installation of a shelf in a storage closet, as well as fire alarm and light fixture that were loose or taken. I am told that he and his witness, S.B., attended the rental unit on September 6, 10, and October 1 in which these issues were noted. The Landlord's evidence contains photographs of the rental unit taken during these visits.

The Landlord emphasized that the Tenant failed to repair the wall damage in contravention of the August 12, 2024 settlement. He also says that the Tenant failed to clean the stove as required by the settlement.

The Landlord also asserts that the Tenant has at least one other individual living in the rental unit with her, pointing to the discovery of an inflated mattress in a storage closet with men's clothing in the closet with an additional toothbrush in the bathroom. The Landlord's witness confirms observing this on the inspection of September 6th, and spoke to the Tenant telling her on October 1, 2024 that her social worker lives in the rental unit, though says the Tenant was somewhat unclear on that occasion.

I asked the Landlord what illegal activity he alleges the Tenant is undertaking in the rental unit. The Landlord says that having people living in the rental unit without his consent is illegal.

I asked the Landlord which material term of the tenancy agreement he alleges the Tenant has breached. The Landlord was not clear on this point, not able to direct my attention to the specific breach alleged. I asked whether any written demand was sent to the Tenant by him. I am told by him that he did not do so.

The Tenant's advocate argued that the issues mentioned by the Landlord are the type of damage expected from an occupant during a tenancy that started in 2019. The Tenant's advocate denies any other adult lives in the rental unit, while saying that the Tenant's son has slept in the rental unit when he visits her on the weekends, but otherwise resides elsewhere.

The advocate further acknowledges that the walls have not been repaired as agreed under the settlement agreement, indicating that a repair person for the support organization was away on vacation and that the issue was not deemed urgent such that, given his limited time, the wall repair was put off. The advocate emphasized, however, that the support organization fully intends to assist the Tenant in repairing the walls as agreed.

Finally, the advocate advises that the kitchen light fell on its own, positing that it may be from vibrations from the unit above the Tenant's rental unit. I am told the smoke alarm was removed because it was going off continuously and that the toilet seat was removed to accommodate the Tenant as she had recently had a hip surgery.

Findings

Looking first to the alleged breach of a material term of the tenancy agreement, I find that the Landlord has failed to demonstrate the One Month Notice was properly issued under s. 47(1)(h) of the *Act*. The Landlord is required to give the Tenant written notice of the breach and give her time to correct the issue. By the Landlord's own admission, he did not do so. Accordingly, I would not uphold the One Month Notice on this ground.

Looking next to the alleged illegal activity, I too find that the Landlord has failed to demonstrate the One Month Notice was properly issued under s. 47(1)(e)(i) of the *Act*. Leaving aside whether there was any damage to the rental unit, the Landlord must also prove illegal activity. Policy Guideline #32 provides guidance on what may constitute illegal activity, stating the following:

> The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.
>
> The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.
>
> In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

In short, the Landlord has failed to demonstrate what law the Tenant has violated. I am told the Tenant had occupants without his permission. With respect, that is not a law and within the context of the guidance outlined above, the issue is a trifle such that it could not form the basis of ending the tenancy under s. 47(1)(e) of the *Act*.

The other issues in the One Month Notice are tied to two generalized allegations: failure to repair the rental unit and there being an unreasonable number of occupants.

The Landlord alleges the Tenant has failed to repair the rental unit. As noted above, s. 47(1)(g) of the *Act* specifically refers to s. 32(3) of the *Act*, which sets out the obligation of tenants to repair damage caused by them or their guests. However, s. 32(4) of the *Act* clarifies that a tenant is required to repair damage that results from reasonable wear

and tear. In other words, the Landlord cannot rightly seek to end a tenancy due to damage that is attributable to reasonable wear and tear.

None of the repair issues alleged by the Landlord would classify as exceeding reasonable wear and tear such that it is attributable to the Tenant. The wall damage shown in the photographs are the types of scrapes and bumps expected in a tenancy where occupancy started in 2019. The same is true of the photographs showing the scuffs on the cabinets.

I note that regardless of this, the Tenant has agreed to repair the walls in the August 12, 2024 settlement. The Tenant has not done so. Despite this, the damage itself to the walls as demonstrated in the Landlord's photographs is, frankly, trifling, even if it could be classified as damage exceeding reasonable wear and tear. In short, I do not accept it warrants ending the tenancy.

The Landlord raised issue with the installation of a shelf in a storage closet. With respect, the Tenant is permitted to put things up on the walls, including the installation of storage shelves. The issue, if there is one, would be one to be dealt with after the tenancy was over in the form of a claim for compensation for damage to the walls. In my view, it is not sufficient to support the end of the tenancy and constitutes the type of use one would expect of someone who is living in the rental unit.

With respect to the appliances cited by the Landlord, I find that this issue is irrelevant. The Tenant paid for its repair. Irrespective of whether I agree the Tenant was responsible, the issue has been dealt with pursuant to the settlement. It seems somewhat disingenuous of the Landlord to cite these within the context of showing why the One Month Notice was issued when the Tenant complied with the terms of a settlement where the Landlord withdrew a previous notice for cause.

I am told by the Landlord that the stove was not clean. Again, this issue, even if it were present, is trifling and certainly not one that can be cited for cause for ending a tenancy. The photographs of the stove given to me shows a level of cleanliness consistent with someone who uses it day to day. I would necessarily expect a stove to be always sparkling clean, nor would the cleanliness issue demonstrate justify ending the tenancy.

The fire alarm was taken down by the Tenant, which is shown in a photograph provided by the Landlord and admitted by the Tenant's advocate. Despite this, I also accept that it was running continuously, which would have reasonably prompted the Tenant to take it down. The loose wires would suggest the Tenant used more force in removing the fire alarm than she ought to have. However, the alarm appears to have been malfunctioning such that it needed repaired by the Landlord under s. 32(1) of the *Act* in any event.

Similarly, I accept that the light in the kitchen fell loose as discussed by the Tenant's advocate. The Landlord infers the Tenant ripped it down, though provides no evidence to support that. It is just as likely the fixture came loose. In other words, the Landlord has failed to establish the Tenant caused this damage such that its repair would fall under the Landlord's obligation to repair the rental unit under s. 32(1) of the *Act*.

Finally, I accept the toilet seat was removed by the Tenant. I also accept that she did so to accommodate her recent hip surgery. I do not find the temporary removal of a toilet seat constitutes damage within the meaning of s. 32 of the *Act*. Further, I find that its temporary removal was reasonable under the circumstances.

I find that the Landlord has failed to establish the Tenant has damaged the rental unit in a manner that exceeds reasonable wear and tear. With respect to the fire alarm, I accept the Tenant appears to have ripped it down, which she ought not have done. However, I accept it was malfunctioning such that its removal was warranted, and its repair was required in any event.

I would not uphold the One Month Notice on ss. 47(1)(d)(iii), 47(1)(f), and 47(1)(g) of the *Act* as it relates to the repair issues cited by the Landlord.

Concerning the allegation of there being an unreasonable number of occupants, I similarly find the Landlord has failed to substantiate the allegation. I am told someone else is living in the rental unit, which the Tenant denies. There is simply no evidence to support another occupant. I accept the Tenant has her son come stay from time to time. However, the Tenant is entitled to have guests visit her, which includes overnight guests. The issue arises when an individual begins to occupy the space as their primary residence. In my view, the Landlord has failed to show the Tenant is permitting any other occupants in this instance.

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

2) Is the Landlord entitled to the return of his filing fee?

As the Landlord was unsuccessful, I find that he is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

Conclusion

I dismiss the Landlord's application, in its entirety, without leave to reapply.

I grant the Tenant her requested relief and cancel the One Month Notice, which is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

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: November 7, 2024

Residential Tenancy Branch