

## **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 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

It also dealt with a second application by the Tenant under the Act 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 for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 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

Tenant S.C., Tenant V.R. and G.W attended for the Tenant.

Landlord A.G., and S.P. attended for the Landlord.

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

The Landlord confirmed receipt of the Proceeding Package via registered mail and that they had enough time to review it. I find the package properly served per section 89 of the Act.

### **Service of Evidence**

The Landlord confirmed receipt of the Tenants' evidence via standard mail and that they had enough time to review it. I find that it was served per section 88 of the Act.

The Tenants confirmed receipt of the Landlord's evidence via the Landlord placing it in the mail slot and that they had enough time to review it. I find that it was served per section 88 of the Act.

## **Preliminary Matters**

### *Claims Withdrawn*

At the outset of the hearing the Tenants requested to withdraw the following claims:

- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Given the Tenant withdrawing these claims do not prejudice the Landlord's interests I grant their request. The aforementioned claims are therefore dismissed with leave to reapply.

## **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

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

Is the Tenants entitled 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 Landlord testified that the tenancy began on April 1, 2017, while the Tenants claim it began on April 4, 2017.

Both parties agree the rent currently is \$1,344.47 due on the first day of the month. The Landlord currently holds a \$600.00 security deposit.

Both parties agree that the Landlord served the Tenants two One Month Notices and one 10 Day Notice. The Landlord served all the notices on October 11, 2024, by putting them in the Tenants' mail slot.

### *10 Day Notice and Unpaid Rent*

The Landlord claims the Tenant did not pay their full rent on October 1, 2024. The Tenant paid their rent in full on October 15, 2024, by e-transfer. The Landlord claims they did not receive payment until October 18, 2024, due to a bank processing error.

### *One Month Notice*

Both parties agree that one of the two One Month Notices had the cause of repeated late payment of rent selected. The other One Month Notice had the following claims selected:

- Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
  - 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.
  - put the landlord's property at significant risk

The "more" information box for the second One Month Notice focused on the Tenants allegedly bothering the tenants that lived below them in the downstairs unit.

### *Repeated Late Payment of Rent*

At the hearing the Landlord testified there was an understanding between the Tenants and themselves. The Landlord would give the Tenants until the fifth of the month to pay them their rent in emergency situations.

At the hearing the Landlord testified the Tenants paid their rent late in October 2024 and April 2023.

The Tenant submitted an addendum to their tenancy agreement stating that rent could be paid up to the fifth of the month in extreme situations. It states that in this case there would be a \$100.00 penalty. It goes on to state that the rent should always be paid by the fifteenth of the month.

The Landlord provided e-transfers showing the Tenants paying their rent after the first throughout 2024 during the months of: September, August, July, June (partial payment of \$47.03), May, April, March, February, and January. All but the June payment was within five days of the first of the month.

### *Conflict with the Neighbours*

Both parties agree the residential property consists of two rental units. The upstairs unit (the rental unit) is occupied by the Tenants. The downstairs unit was occupied by S.P. and J.P. Both parties acknowledged there has been significant conflict between the two including noise complaints, improper communication, the placement of security cameras, the building of a shed, and garbage allegedly left on the property.

The Landlord also indicated on the Notice to End Tenancy that the Tenants have allegedly seriously jeopardizing lawful rights or interests of the Landlord or another occupant and place the property at significant risk.

S.P. testified at the hearing that the Tenants did not observe an agreement that they were to be quiet after 10:00 pm. They testified there were jumping noises, people going down the stairs, and music after 10:00 pm. S.P. later testified that they never personally heard the jumping noises, but they heard about them from J.P. the lower tenant. This allegedly disrupted J.P. because they worked early.

The Landlord submitted video testimony from J.P. and J.P. testified that the Tenants made the noises S.P. described. They also claimed the noise was intentionally done by the Tenants and that they complained to the Tenants about this.

Tenant V.R. testified that while there may have been noise, the noise was not excessive. They claim the residential property was poorly soundproofed. They stated that if the laundry room door was shut too hard it would sound as if the house was shaking. They claimed they had done their best to ensure that their child whose room was above J.P.'s was in bed by 9:30 pm. However, they conceded that occasionally their son would get up in the middle of the night to use the bathroom.

S.P. testified that V.R. would often request that they go to church with them, despite that they were not Christian. They also said V.R. would call them whenever their child cried. They say they never told V.R. that they did not want to talk to them, but did eventually block V.R.'s number.

V.R. testified they thought they were close to S.P. They thought religion was important, but respected S.P.'s own faith. V.R. said they tried to help S.P. be more involved with their faith, because they thought S.P. was going through a hard time. They said they called S.P. about S.P.'s child, because they didn't think SP was home and was concerned about S.P.'s child's wellbeing.

Both parties agree that the Tenants put up security cameras that monitored outside of the property. J.P. eventually physically destroyed these cameras with a bat.

SP testified they felt their privacy was compromised by the cameras. They never contacted the Tenants about them because they believed the Landlord had given the Tenants permission to put them up.

The Landlord testified they did not like the Tenants having the cameras. They took no action regarding them because they thought the Tenants were legally allowed to put them up without their consent.

V.R. testified the Tenants put up the cameras because they were concerned about what they saw as J.P.'s increasingly erratic behaviour.

Both parties agree the Tenants put up a shed and a tent on the residential property. A friend of the Tenants proceeded to live in the tent. J.P. later destroyed the tent.

S.P. testified the shed blocked their only window.

J.P. said the Tenants had left garbage at the doorstep in their video testimony.

The Tenants claim J.P. left the garbage there.

#### *Actions against the Landlord*

Both parties agree the Tenants sent the Landlord an email where they claimed the Landlord would be liable for any consequences if they did not do anything about J.P.

The Landlord claims they were disturbed by an email.

The Landlord claims the Tenants refused to give them copies of the utility bills, and nonetheless deducted the utilities from their rent. They also claim the Tenants did not give the Landlord a time when a repair person could fix problems with the rental unit. The Landlord claimed this could have caused potential damage to the property.

The Residential Tenancy Branch's (the Branch) records show the Tenant disputed the notices on October 18, 2024.

### **Analysis**

Rule 6.6 sets the balance of probabilities as the standard of proof in disputes before the Residential Tenancy Branch. Under the balance of probabilities standard, a party proves something by showing it is more likely than not to be true. The person making a claim bears the burden of proof.

#### **Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**

Under section 46 (4) a 10 Day Notice is canceled if a tenant pays the outstanding amount within five days of receiving the 10 Day Notice.

Both parties agree the Landlord put the 10 Day Notice in the Tenants' mail slot on October 11, 2024. Based on the Landlord's testimony, I find the Tenants paid the

outstanding amount on October 15, 2024, by e-transfer. I find e-transfer was the established method of paying the rent based on the e-transfers both parties submitted. Therefore, the Tenants paid the outstanding rent within five days of receiving the 10 Day Notice. This means the 10 Day Notice of October 11, 2024, was cancelled and of no effect on October 15, 2024.

Therefore, the Tenant's application is granted for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.

The 10 Day Notice of October 11, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

**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.

I find the One Month Notices were served on October 14, 2024. I base this on the date of service on how the parties agree served all the notices on October 11, 2024, by putting them in the Tenants' mail slot. Documents served through the mail slot are deemed received three days after they are sent under section 90 of the Act.

As the Tenant disputed this notice on October 18, 2024, and since I have found that the One Month Notice was served to the Tenant on October 14, 2024, I find that the Tenant has applied to dispute the One Month Notices within the time frame allowed by section 47 of the Act. Therefore, I find the Landlord properly served the Tenant the One Month Notice.

***Repeated Late Payment of Rent***

Residential Tenancy Policy Guideline 38 gives guidance on how to determine repeated late payment of rent. It states there need to be at least three late rent payments to enforce a One Month Notice. The late payments also do not have to come immediately after one another. Furthermore, Landlord may act in a manner that impacts their ability to use this right. For example, if a landlord acts in a way that reasonably gives their tenant the impression that they do not intend to pursue them for the late rent payments. Finally, an arbitrator may consider if exceptional circumstances outside of the tenants control prevented them from paying on time.

I will go over estoppel specifically promissory estoppel (henceforth referred to as "estoppel"). Estoppel is an equitable doctrine from the common law. Its relevance here

is whether the Tenant's defence that they did not have to pay their rent due to the Landlord owing them money from previous illegal rent increases. Specifically, did the Tenant make a promise the Landlord could reasonably rely upon that prevented the Tenant from acting on their right under section 43(5).

Estoppel prevents one party to enforce a legal right that they have against another, based on a promise they made. The defence of estoppel requires the following be proven to be considered: (1) the parties be *in a legal relationship* at the time of the promise or assurance; (2) the promise or assurance be *intended* to affect that relationship and to be acted on; and (3) the other party in fact *relied* on the promise or assurance"

I find the Landlord's behaviour gave the Tenants a reasonable impression that they could pay their rent within the first five days of the month without issue.

The tenancy agreement's addendum itself mentions the grace period. While the Landlord argued that the addendum mentioning "extraordinary" circumstances meant that the Tenants were always obligated to provide a reason when they paid within the grace period. However, the agreement itself does not mention this obligation.

Furthermore, the Landlord provided eight examples of the Tenants paying within the grace period. The Landlord did not indicate the Tenants received a 10 Day Notice for any of them. I find that the Landlord's not enforcing the Tenants' obligation to explain their extraordinary circumstances leads to the conclusion that either: it did not exist, or the Landlord's actions and the tenancy agreement show the Landlord intended to give the Tenants a reasonable expectation that the Landlord would not enforce it. Either conclusion would prevent the Landlord from evicting the Tenants for repeated late payments during the grace period.

The Landlord might allege that there were three potential late payments the Landlord alleges occurred outside of the five-day grace period. These being the April 2023, June 2024, and October 2024 payments.

The three payments are not all within a twelve-month window, and the June payment was for a partial amount. As Residential Tenancy Policy Guideline 11 states if late payments are far apart they may not be considered repeated. Given that the first and last late payment are fourteen months apart I find they are not repeated.

### *Unreasonable Disturbance*

Residential Tenancy Policy Guideline 55 explains an unreasonable disturbance is something that would disturb a reasonable occupant. Such a reasonable occupant would let go of minor annoyances especially at normal waking hours. However, repeated major disturbances while most would be asleep, would disturb this reasonable occupant and therefore be considered unreasonable.

In this case I find that the Tenants' actions do not rise to the level of an unreasonable disturbance.

The only behaviour that the Tenants were made aware of was the alleged noise originating from their unit. Both parties agree the problem was the hour at which the noise occurred rather than how loud the noise was. Specifically, the downstairs tenants felt the noise should stop at 10:00 pm as they needed their sleep.

I find the Landlord has failed to prove the noise was unreasonable. The right to quiet enjoyment of the property is not the right to absolute silence. Based on the testimony of both parties I find the noises themselves were not significantly loud.

The Landlord claims that V.R. trying to get involved in SP's religious life, or asking after their children, is unreasonable. I do find that these actions are not so obviously unreasonable that V.R. should have known it would disturb S.P.

A similar conclusion follows regarding the Tenants' installing security cameras, a shed, and a tent. If the Tenants had the Landlord's permission, I find these actions are not unreasonable.

I the Landlord has not proven the Tenants were responsible for the trash on the residential property. Both sets of tenants accuse the other of being responsible for this garbage. Rule of Procedure 6.6 places the onus on the Landlord to provide sufficient evidence to support an eviction. I find they have not sufficiently demonstrated who is responsible for the garbage.

I find any comments made by the Tenants related to liability that may arise to fall below the threshold required of an eviction.

I find the Landlord's argument fails as they have not shown how the Tenant has jeopardized their right of access. A landlord's have a right to enter their tenant's rental unit if they give twenty four hours written notice stating a reasonable reason for entry. Given the Landlord has a unilateral right of entry I do not find the Tenants not giving the Landlord permission impacts the Landlord's right. Without any evidence of the Tenants taking steps to prevent the Landlord's access I do find they have not seriously jeopardized the Landlord's rights.



The Landlord claims that the Tenants not facilitating the repairs, as discussed in the previous part, puts the property at significant risk. However, the Landlord did not explain what damage was likely to occur if the repairs were not made. Furthermore, as previously discussed the Landlord still has the legal ability to unilaterally arrange for repairs. I have found the Tenants have not physically obstructed the Landlord's ability to act on their legal right. Therefore, I find the Landlord has not proven the Tenants have put the property at significant risk.

### *Conclusion*

I have found the Landlord has not proven they have cause to end the tenancy based on either of the One Month Notices.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notices under section 47 of the Act.

The One Month Notices of October 11, 2024, are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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

As the Tenant was successful in their application to cancel the Notice in relation to their residence, I find that the Tenant is entitled to recover their \$100.00 filing fee (\$200.00 in they paid for this application under section 72 of the Act.

Given the tenancy will continue, the Tenant may deduct this amount from their next rent payment in full satisfaction of the monetary award for the filing fee.

### **Conclusion**

The Tenant's following claims are dismissed with leave to reapply:

- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Tenant's application is granted for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.

The 10 Day Notice of October 11, 2024, is cancelled and is of no force or effect.

The Tenant's application is granted for cancellation of the Landlord's One Month Notices under section 47 of the Act.

The One Month Notices of October 11, 2024, is cancelled and is of no force or effect.

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

The Tenant is authorized to deduct \$100.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

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 22, 2024

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Residential Tenancy Branch