



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on November 28, 2024. The Tenant seeks cancellation of the Landlord's One Month Notice for Cause (per section 47 of the *Act*).

The Landlord filed their application on December 11, 2024. The Landlord seeks:

- An order of possession pursuant to their One Month Notice for Cause (per section 55 of the *Act*).
- Recovery of their \$100.00 filing fee (per section 72 of the *Act*).

No one attended the hearing for the Tenant. The Landlord was represented by their agent, AR.

Service of Records

- *Tenant's Records to the Landlord*

In their application, the Tenant did not provide any information on how they served their records to the Landlord.

At the hearing, AR testified that the Landlord was never served with the Tenant's application.

The Tenant did not attend the hearing to provide opposing testimony.

I find the Tenant has failed to prove they served their application to the Landlord, in accordance with section 89 of the *Act* and the applicable rules of the Residential Tenancy Branch's (the **Branch**) *Rules of Procedure*.

Rule 3.5 of the Branch's *Rules of Procedure* states:

If the applicant cannot demonstrate that each respondent was served as required by the *Act* and the *Rules of Procedure*, the director may adjourn the application or dismiss it with or without leave to reapply.

The Landlord's application is in relation to the same notice of tenancy that the Tenant is disputing in their application. As the Landlord was able to demonstrate service in accordance with Rule 3.5 of the *Rules of Procedure* (as I have outlined below), the hearing went ahead as scheduled.

As the Landlord was successful with their application, and as the Tenant failed to demonstrate they served their application to the Landlord, I dismiss their application, without leave to reapply.

- *Landlord's Records to the Tenant*

AR testified that they served the Tenant, with a copy of the Landlord's application and all documentary evidence, by pre-agreed email, on December 12, 2024.

The Landlord submitted a copy of their agent's email to the Tenant, wherein I can see attachments, including the Proceeding Package, along with the Landlord's documentary evidence, as well as the Tenant's email address. The date of the foregoing email is December 12, 2024. The Landlord submitted a copy of an #RTB-51 Address for Service form, signed and dated by an agent of the Landlord, as well as by the Tenant, on March 20, 2023. In the address for service form, I can see the Tenant's email address.

Based on all the above, I find, on a balance of probabilities, that the Landlord served the Tenant with their application and documentary evidence, by pre-agreed email.

Pursuant to section 90 of the *Act*, I find the Tenant is deemed served with the Landlord's application and documentary evidence, by pre-agreed email, in accordance with sections 88 and 89 of the *Act*, and in accordance with section 43 of the *Residential Tenancy Regulation*, on December 15, 2024, the third day after the emailing date.

Background Facts and Evidence

I have reviewed all evidence, including AR's testimony, but I will refer only to what I find relevant to my decision.

The Landlord provided evidence that (by submitting a copy of the tenancy agreement for this tenancy and via AR's unopposed affirmed testimony) this tenancy began on or about March 1, 2015; that the current monthly rent is \$1,281.00, due on the first day of every month; that the Landlord is holding a \$537.50 security deposit in trust for the Tenant; and that the Tenant's Rental Unit is situated on the ground floor of a three-storey rental building (the **Rental Building**).

In their application, the Tenant stated that they received the Landlord's eviction notice on November 18, 2024. At the hearing, AR testified that they served the Tenant with the Landlord's One Month Notice for Cause, signed and dated by AR on November 18, 2024, by pre-agreed email, on November 18, 2024 (the **Notice**).

Both parties submitted a copy of the Notice for consideration. The Notice has an effective date of December 31, 2024. On page two of the Notice, the Landlord's agent has selected several grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's agent also completed the "Details of Cause(s)" section of the Notice, which I have reviewed.

At the hearing, with respect to the above grounds, AR referred me to clauses 2, 14, and 15 of "Schedule A" to the parties' tenancy agreement, all of which I have reviewed. Clause two is in relation to additional occupants, clause 14 is in relation to unauthorized pets, and clause 15 is in relation to conduct in the Rental Building and the Rental Unit.

AR testified that for approximately a year, the Tenant has been abusing drugs and inviting unhoused occupants to the Rental Building and to the Rental Unit, who are causing issues with safety and quiet enjoyment with respect to other residents of the Rental Building.

AR testified that on October 23, 2024, alone, the Police attended the Rental Unit and the Rental Building three times.

AR testified that on October 23, 2024, two police officers attended the Rental Building and asked to be let in to the Rental Unit. AR testified that when they unlocked the Rental Unit's door for the police, they discovered an unauthorized dog. AR testified that

the police then spent some time inside the Rental Unit and when they were certain the Tenant was not there, they left.

AR testified that later on the same date, on October 23, 2024, at approximately 12:00 pm, a maintenance worker attended AR's office to advise that there is a "questionable" individual standing outside the Rental Building swaying from side to side (suggesting the individual was abusing drugs) and attempting to enter the Rental Building with a key. AR testified that they then questioned the individual, because they could not recognize them as a resident of the Rental Building. After some argument, the individual, AR testified, informed AR that their "grandmother" lives in the Rental Unit, but they did not identify the Tenant by name.

AR testified that the age of the individual and the age of the Tenant suggested to them that it was not possible for the Tenant to be their grandmother. And, because of the police's attendance earlier in the morning of October 23, 2024, they decided to contact the police.

AR testified that the individual then entered the Rental Building and the Rental Unit without providing AR the Tenant's name. AR testified that when the police arrived (same officers as in the morning of October 23, 2024), they questioned the now-occupant of the Rental Unit, but the occupant would not provide the Tenant's name and became aggressive. AR testified that they witnessed the police officers arrest the occupant, but they could not locate the key that the occupant used to enter the Rental Building and the Rental Unit. AR testified that the police officers advised AR to contact the police if other individuals attend the Rental Building.

AR testified that again, on October 23, 2024, new individuals attended the Rental Building asking to be let into the Rental Building. AR testified they contacted the police again and when they arrived, they advised AR that they had found the Tenant in a hospital. AR testified that the police advised AR that the Tenant had given all these individuals permission to attend the Rental Building and the Rental Unit, and this matter has now become a tenancy matter.

The Landlord submitted a police file number, but not a copy of a police report.

AR testified that they work in the Rental Building daily and the last time they saw the Tenant was over one month prior to the date of the hearing, when they attended the Rental Building's office to pay rent. AR advised that, at the time of the hearing, the Tenant had not yet paid their monthly rent.

AR referred me to the following complaint letters from three separate residents of the Rental Building, all of which I have reviewed in detail:

- Signed hand-written letter, dated October 23, 2024, addressed to AR, written by a resident on the third floor of the Rental Building. In this complaint letter, the resident advises AR that “unusual and suspicious” individuals are gaining access to the Rental Unit from the Rental Unit’s patio window and also entering from the Rental Building’s entrance. In addition, the resident advises AR of an incident that occurred in the Rental Unit on October 22, 2024, “between 11 pm and 2 am”. The resident complains about loud and constant barking of a dog, loud arguments, and angry shouting originating from the Rental Unit during irregular hours. The resident complains about the incident, but also raises questions about safety in relation to the Rental Unit generally.
- Signed typed complaint from the Rental Unit’s neighbouring unit (at the hearing, AR identified the unit number and testified that the date of the complaint was November 8, 2024) regarding “suspicious and unwanted guests again wandering around the property” in the evening. In this complaint, the resident states that they were approached by two “homeless men and one woman” demanding to be let into the Rental Building. The resident states that the individuals identified the Tenant and the Rental Unit. The resident states that they declined the individuals’ demands, but they later witnessed all three individuals in the lobby of the Rental Building. The resident cites safety concerns for themselves and their children.
- Signed handwritten statement from AB, a resident living on the third floor of the Rental Building, dated December 19, 2024. In this complaint letter, the resident states that “men on bikes w/ backpacks coming and going from [the Rental Unit] usually late at night but also during day. – Daily. Last 5-6 months. Drug addicts sitting at door calling and yelling for the owner to come out. This is an everyday occurrence. I have seen dozens of times this exchange. Men on bikes with backpacks.”

The Landlord submitted copies of two warning notices, addressed to the Tenant, dated October 22, 2024, and October 23, 2024, signed by the Rental Building manager, AR. AR testified that the letters were served to the Tenant. In these letters, I can see a warning about a one month notice for cause, if the Tenant does not remove the unauthorized “large dog” brought onto the Rental Unit by the Tenant’s guests and if the Tenant does not stop providing access to various “questionable individuals”.

The Landlord submitted a picture of a large black dog resting in the patio of a unit, which AR identified as the patio of the Rental Unit. AR testified that the dog is still there,

but the submitted picture was taken on December 20, 2024 (nearly two months after the October 2024 warning letters).

AR testified that they have received many “oral” complaints from all three floors of the Rental Building, but most residents do not wish to be identified, citing safety concerns. AR testified that the complaints are regarding the Tenant’s guests standing in the front and the back of the Rental Building screaming and yelling. AR testified that the residents of the Rental Building are scared and concerned for their safety.

AR testified that on November 8, 2024, a teenage female resident of the Rental Building approached AR and requested to be escorted to their residence, because they feared the three individuals standing in front of the Rental Building demanding to be let into the Rental Building. AR testified that they went to the Rental Building’s entrance to investigate, at which time they asked the three individuals who they were and why they were demanding to be let into the Rental Building. AR testified that the three individuals identified the Tenant and began insulting AR. AR testified that the three individuals eventually left, but they appear to have returned that evening based on the complaint letter they received on the same date.

AR testified that on January 2, 2025, a stranger standing outside the Rental Building was screaming for the Tenant. AR testified that they received calls from more than one resident in the Rental Building regarding the individual screaming outside the Rental Building. AR testified that they went and spoke with the individual screaming outside, but they would not leave, so they called the police who attended and “took her away”.

Analysis

Section 47 of the *Act* states that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so under the *Act*.

The Tenant, in their application, states that they received the Notice on November 18, 2024, on the Rental Unit’s door. The Landlord’s agent testified that they sent the Notice by pre-agreed email, on November 18, 2024. The Landlord submitted a copy of the associated email, and I can see the Tenant’s email address. I am satisfied that the Tenant was in receipt of the Notice by one of the two methods, because the Tenant disputed the Notice and submitted a copy of the Notice as evidence. I find, based on the submitted copy of the #RTB-51 address for service agreement, that the parties had an agreement regarding the service of records by email.

Based on the above, and pursuant to section 90 of the *Act*, I find the Tenant is deemed served with the Notice, by pre-agreed email, in accordance with section 88 of the *Act*

and sections 43 and 44 of the *Residential Tenancy Regulation*, on November 21, 2024, the third day after the emailing date.

In this case the Landlord bears the onus to prove one or more of the grounds selected on page two of the Notice, which I copied in the previous section of my decision. The standard of proof in this tribunal is on a balance of probabilities. The Tenant did not attend the hearing to dispute AR's affirmed testimony.

I have reviewed Schedule A to the tenancy agreement between the parties. Clause 14, in relation to pets, is initialed by tenant SM and an agent of the Landlord (not every clause is initialed, suggesting that the parties paid particular attention to this clause of the tenancy agreement).

Clause 14, above, states that the "Tenant shall not keep, or allow to be kept, any animals or pets, domestic or wild [...] unless specifically permitted in writing from the Landlord". In the clause, I can see reference to the materiality of this condition with respect to the parties' tenancy agreement. Although inclusion of such a statement is not determinative, I once again note that the parties paid particular attention to this clause by placing their initials beside the clause. Clause 14 further states that the Landlord may terminate the tenancy based on contravention of this clause.

I find, based on the Landlord's evidence, that clause 14 of Schedule A to the tenancy agreement was a material term of the parties' tenancy agreement.

I accept the Landlord's evidence that the Tenant and/or their guest(s) have brought a large dog inside the Rental Unit, which was heard and seen by the Landlord's agent (pursuant to their testimony and the picture provided) and at least one other resident of the Rental Building (based on their statement). The Landlord's agent testified that the dog in question is still inside the Rental Unit, notwithstanding the Landlord's two warning letters, dated October 22, 2024, and October 23, 2024. I also note that the submitted picture showing a dog sleeping in the patio of the Rental Unit was taken nearly two months after the Landlord served the Tenant with the two warning letters.

I find the Tenant has failed to correct their contravention of the no-pets clause of the parties' tenancy agreement, within a reasonable amount of time from the date of the two warning letters.

With respect to the Tenant's guests, I find, based on AR's testimony and the Landlord's documentary evidence, that the Tenant's guests are significantly interfering with or unreasonably disturbing the Landlord and/or other occupants of the Rental Building. I have reviewed the three complaint letters submitted by the Landlord.

I have no reason, based on the documentary evidence submitted by the Landlord, to disregard AR's affirmed testimony that, in addition to the submitted written complaints, AR has received many other oral complaints from concerned residents who do not wish

to be named. Tenants have an absolute right to bring guests, but they are ultimately responsible for the actions and conduct of their guests. There is evidence before me that the Tenant has provided keys to the Rental Unit and the Rental Building to individuals who are causing disturbance at the Rental Building.

I accept AR's testimony that they were informed by police officers, on October 23, 2024, that the individuals that entered the Rental Building and the Rental Unit, with the Tenant's keys, on October 23, 2024, were authorized guests of the Tenant. I note that at least two different guests of the Tenant's were taken away by the police (pursuant to AR's testimony), in late-October 2024, and in January 2025.

AR's testimony regarding their own interactions with the Tenant's guests on November 8, 2024, was corroborated by at least one of the residents of the Rental Building who identified the same individuals in their complaint letter of November 8, 2024.

I accept AR's testimony that they were approached by a teenage resident of the Rental Building requesting to be escorted to their residence out of fear of the Tenant's guests.

Based on all the above, I find the Landlord had cause to issue the Notice. In addition, while the Tenant filed their dispute application in time, I have not found any evidence that the Tenant served their application to the Landlord in accordance with section 89 of the *Act* and the applicable Rules of the Branch's *Rules of Procedure*.

A notice under section 47 of the *Act* must comply with section 52 of the *Act*. Having reviewed the Notice, I find the Notice is compliant with the form and content requirements of section 52 of the *Act*, because it is signed and dated, it provides the correct effective date, it provides the Rental Unit's address and the grounds for ending the tenancy, and it is in the prescribed form.

For all the above reasons, I find that the Landlord is entitled to an Order of Possession based on the Notice, under sections 47 and 55 of the *Act*. Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this case, the tenancy has been long-standing, suggesting the Tenant may need additional time to vacate the Rental Unit. However, at the time of the hearing, the Tenant had not yet paid their monthly rent. Considering both foregoing factors, **I grant the Landlord an Order of Possession effective by 1:00 PM on January 31, 2025, after service of the attached Order to the Tenant.**

As the Landlord was successful, I grant the Landlord's application for the recovery of the filing fee from the Tenant, pursuant to section 72 of the *Act*, to be collected in its entirety from the Tenant's security deposit. Following my Order, the Landlord is effectively only holding a \$437.50 security deposit, in trust for the Tenant.

Conclusion

The Tenant's application is dismissed, without leave to reapply. The Landlord's application is granted in full.

I grant the Landlord an Order of Possession effective by 1:00 PM on January 31, 2025, after service of the attached Order to the Tenant.

As the Landlord was successful, I grant the Landlord's application for the recovery of the filing fee from the Tenant, pursuant to section 72 of the *Act*, to be collected in its entirety from the Tenant's security deposit. Following my Order, the Landlord is effectively only holding a \$437.50 security deposit, in trust for the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 08, 2025

Residential Tenancy Branch