Dispute Resolution Services

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 March 20, 2025. The Tenant seeks cancellation of the Landlord's One Month Notice for Cause (per section 47 of the *Act*) and a compliance order from the Director, pursuant to section 62 of the *Act*.

The Landlord filed their application on March 26, 2025. The Landlord seeks an Order of Possession pursuant to their One Month Notice for Cause (per section 55 of the *Act*).

No one attended the hearing for the Tenant. The Landlord was represented by their agent, ARS. During the hearing ARS called TD as a witness.

Service of Records

- *Tenant's Records to the Landlord*

In their application, the Tenant did not provide any information on how they served the Proceeding Packaging (their application and evidence) to the Landlord.

At the hearing, ARS testified that the Landlord was never served with the Tenant's application and evidence. The Tenant did not attend the hearing to provide opposing testimony.

I find the Tenant has failed to prove they served their application and evidence 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 to end 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 Tenant failed to demonstrate they served their application to the Landlord, and as they failed to attend the hearing to explain why they failed to serve their application and/or to request an adjournment, I dismiss the Tenant's application to dispute the Landlord's eviction notice, without leave to reapply. I will address the Tenant's claim for an order of compliance in the "Analysis" section of my decision.

In making my decision, I have not relied on the Tenant's documentary and digital evidence, because I find the Tenant failed to establish service of these records to the Landlord.

- *Landlord's Records to the Tenant*

The Landlord submitted a signed and dated RTB-55 Proof of Service form indicating that ARS served the Tenant with the Landlord's application on March 26, 2025, by pre-agreed email.

The Landlord submitted a signed and dated RTB-51 Address for Service form, wherein I can see the Tenant's email address, the Tenant's name, and the Tenant's signature. I find, pursuant to the foregoing record, the parties agreed on November 7, 2024, to give and be given records related to their tenancy and for the purposes of the *Act*, by email.

The Landlord submitted a copy of an email sent to the Tenant by ARS, wherein I can see the parties' email addresses and attachments. I can see that the Landlord's email includes the Landlord's application and the Landlord's documentary evidence as attachments. The time and date of the foregoing email are 4:40 PM and March 26, 2025, respectively. I can see that the Tenant responded to the Landlord's email at 4:41 PM on March 26, 2025, with the statement "Your [*sic*] a fucking Moron [*sic*]".

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, on March 26, 2025, in accordance with section 43 of the *Residential Tenancy Regulation*.

Background Facts and Evidence

I have reviewed the Landlord's evidence, including ARS' and TD's testimonies, <u>but I will refer only to what I find relevant to my decision</u>.

The Landlord provided evidence (by submitting a copy of the tenancy agreement for this tenancy and via ARS' unopposed and affirmed testimony) that this tenancy began on

December 1, 2024, and that the current monthly rent is $950.00, due on the first day of every month.

TD testified that the Rental Unit (the term “Rental Unit” is defined on the cover page of my decision) is situated on the top floor of a two-storey rental building (the **Rental Building**).

In their application, the Tenant stated that they received the Landlord’s eviction notice on March 12, 2025, by pre-agreed email. At the hearing, ARS testified that they served the Tenant with the Landlord’s One Month Notice for Cause, signed and dated by ARS on March 12, 2025, by pre-agreed email, on March 12, 2025 (the **Notice**).

The Landlord submitted a complete copy of the Notice for consideration. The Notice has an effective date of April 30, 2025. On page two of the Notice, ARS selected the following ground for why this tenancy must end: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

ARS completed the “Details of Cause(s)” section of the Notice as follows:

- “Repeated complaints regarding your dog attacking another tenant’s pet and persistent barking throughout the night.”
- “Multiple reports of confrontational behavior, including failure to respect personal boundaries and creating an uncomfortable living environment for others.”
- “Continued misuse of the emergency exit door despite previous warnings.”
- “Loud music and disruptive behavior at unreasonable hours, disturbing neighboring tenants.”

ARS testified that the parties previously attended arbitration respecting a previous notice to end tenancy, which was canceled pursuant to a decision dated February 10, 2025. The Landlord did not submit a copy of the foregoing decision for my review.

The Landlord testified that on February 9, 2025, a resident from unit number six in the Rental Building messaged ARS and informed ARS that the Tenant’s dog peed on their “mat”, and when they confronted the Tenant about the incident, the Tenant acted aggressively. At the hearing, ARS reviewed the resident’s text message, dated February 9, 2025. I asked ARS to read the message verbatim. ARS testified that the text message reads as follows: “[the Tenant] got in my face and told me that this is my town and that we don’t belong here”.

ARS testified that in February 2025 and in March 2025, they were trying to limit their interactions with the Tenant, because of the Tenant's aggressive behaviour.

ARS testified that on March 10, 2025, a resident from unit number nine in the Rental Building messaged ARS with the following statement: "[the Tenant's] dog is out here trying to attack my black lab".

ARS called TD as a witness. TD testified that:

- They are the Tenant's neighbour and a resident of unit number four.
- They have been residing in their unit since the Tenant's tenancy began.
- To date, they have sent multiple complaints to the Landlord regarding the Tenant, but there have been incidents between TD and the Tenant which did not result in complaints to the Landlord.
- Prior to March 2025, the Tenant's dog, which was off leash, approached TD's dog in an aggressive manner, scaring TD's dog, but the Tenant, who was standing in a distance watching the incident did nothing until TD stood between the two dogs, at which time the Tenant approached TD and began "ranting at me".
- The above incident was a repeat incident.
- On March 11, 2025, they formally complained to ARS in writing about the Tenant's dog and loud music at odd hours.
- On March 27, 2025, they sent the Landlord another complaint, because the Tenant was playing their music and singing so loud at 4:00 AM that both they and their spouse woke up from sleep.
- On March 27, 2025, the Tenant was "doing laps" in the Rental Building's common areas, including in hallways, "singing out of the top of her lungs" and disturbing residents.
- On March 27, 2025, they discovered a clay pot thrown at the windshield of their vehicle which had smashed their windshield.
- They believe the Tenant smashed their windshield, considering the Tenant's earlier behaviour in the common area(s) of the Rental Building.
- They spoke with police officers and officers went to the Rental Unit to speak with the Tenant, but because TD could not provide sufficient evidence to the police, no further actions were taken.
- On April 10, 2025, they found a hand-written note attached to their car, written and signed by the Tenant under a pseudonym, wherein the Tenant stated to TD that if TD does not move their "piece of shit car out of here" by the next morning, they will have the car towed.

- Their vehicle is in its correct parking spot and the Landlord has no complaints regarding their vehicle.
- Prior to March 12, 2025, someone would “pound” the Rental Unit’s door at irregular hours, wanting to “knock the door off the hinges”, and then running away, and they believe the Tenant was the individual responsible, because sometime after March 12, 2025, at approximately 2:00 AM to 4:00 AM, they heard the Tenant screaming in hallways looking for their dog which had ran away, and pounding on every resident’s door in the process.
- At approximately 9:00 AM to 10:00 AM on April 24, 2025 (the date of the hearing), while they were in their unit, they heard the Tenant screaming at someone outside the Rental Building, and they began recording the incident on their phone.
- They sent the above recording to the Landlord.

ARS testified that in the morning of April 24, 2025, they began receiving complaints from residents of the Rental Building, including from TD and resident of unit 10, regarding the Tenant screaming at someone. ARS testified that the resident of unit 10 informed them that the Tenant is screaming at a woman with a stroller and a child. ARS testified that they reviewed the recording sent to them by TD, and they could hear the Tenant stating to the third-party to “[go ahead] call the cops, you can, you can also tell the cops I fucking see you again you’re done all of you and that’s a fucking promise”.

TD testified that they and their spouse live in “extreme anxiety” and when they hear the Tenant exit their apartment, they become anxious.

TD testified that anytime the Tenant’s dog hears movement in the Rental Building, the dog begins to bark loudly from five minutes to an hour and the Tenant does nothing to address the matter.

ARS testified that they and the Rental Building’s owner discussed the Tenant’s behaviour and the Tenant’s dog with the Tenant, in person and verbally, on various dates, from the start of the tenancy to when the Notice was given.

ARS testified that prior to the Notice being issued, they called the police because the Tenant was screaming in the hallway that “this is my town”. ARS did not provide the date of the police call or a police report.

The Landlord submitted a copy of TD’s March 11, 2025, complaint email, sent to ARS at 12:38 PM, which I reviewed prior to making my decision.

The Landlord submitted a copy of a letter they sent to the Tenant, on March 12, 2025, along with a copy of the Notice, wherein they provide additional information regarding the Notice, as well as the following statements:

- "A Final Warning Letter was issued on February 21, 2025, detailing similar complaints and notifying you of the consequences of continued violations."
- "Despite the warning, complaints have persisted, demonstrating a pattern of noncompliance with tenancy obligations."

ARS testified that when they sent the Tenant the above warning letter, the Tenant replied with "you're a wingnut". The Landlord submitted a copy of an email, sent to ARS from the Tenant, on March 13, 2025, at 5:33 AM, with the statement "Ya non of that's true and I'll be disputing it again you wing nut".

The Landlord also submitted a copy of the Tenant's response email to the Landlord's email, dated March 26, 2025, which includes the Landlord's application and only the statement "Hi [Tenant], Please read attached [ARS]". The Tenant sent two reply emails to ARS, at 4:41 PM and 4:42 PM, respectively, with the following two statements:

- "Your a fucking Moron."
- "my sisters at [redacted by me for privacy] waiting for you. she wants to talk about your position."

ARS testified that the Tenant has been discussing ARS' job with ARS, but they are unsure what the Tenant means.

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 March 12, 2025, by pre-agreed email. The Landlord's agent testified that they sent the Notice by pre-agreed email, on March 12, 2025, the same date that the Notice was signed. The Landlord submitted records to prove their March 12, 2025, email to the Tenant. I have already found that the parties had an agreement to serve records by email for the purposes of section 88 of the *Act* and section 43 of the *Regulations*. I am satisfied that the Tenant was in receipt of the Notice by pre-agreed email, on March 12, 2025.

On March 20, 2025, the Tenant filed an application to dispute the Notice, pursuant to section 47(4) of the *Act*. However, as I have already found, the Tenant failed to serve their application to the Landlord and to notify the Landlord of the dispute. The Tenant did not attend the hearing to explain why they failed to serve their application to the

Landlord and to seek an adjournment. Under Rule 3.5 of the Branch's *Rules of Procedure*, I may dismiss the Tenant's application to dispute the Notice with or without leave to reapply. Section 55(1) of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the Notice complies with section 52 of the *Act*, because it is in the approved form and because ARS:

- Signed and dated the Notice.
- Included the Rental Unit's address.
- Included the effective date of the Notice.
- Provided the ground for why this tenancy must end.

Due to the Tenant's failure to serve their application to the Landlord, their application is dismissed. Consequently, under section 55(1) of the *Act*, because the Tenant's application to dispute the Notice is dismissed and because the Notice complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession.

However, if I am wrong in my analysis above, I provide the following alternative reasons for granting the Landlord's application. Section 44.1 of the *Act* states that a landlord must not give the tenant notice to end tenancy unless, when the notice is given, in respect of the purpose set out in the notice, (a) the relevant requirements or circumstances applied, or (b) the landlord had a reasonable belief that the relevant requirements or circumstances applied.

Therefore, the Landlord bears the onus to prove that the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

As stated under the Branch's Policy Guideline 55, interference for the purposes of section 47 of the *Act* must be "something more than the minor annoyances that ordinarily arise when occupying multi-unit buildings or parks, especially during hours when people are typically awake, such as hearing an occasional argument or some hammering when a tenant is hanging pictures".

Policy Guideline 55 further states that "if a tenant repeatedly played loud music late at night or had long frequent screaming fights with another occupant in their unit, this could be considered an unreasonable disturbance to the other occupants of the rental property".

In this case, prior to the issuance of the Notice, no less than three different tenants in a small building complained about the Tenant's behaviour, and the Landlord's agent testified that the Tenant always acts in an aggressive manner when the Rental Building's owner or ARS approach the Tenant. I accept ARS' testimony, not only because it went undisputed, but also considering the Tenant's responses to the Landlord's emails in writing (i.e. "wing nut" and "Your a fucking Moron [*sic*].")

After the Notice was issued, a fourth unit also sent a complaint to the Landlord.

On February 9, 2025, tenant from unit six complained about the Tenant's dog urinating on their personal possession and about the Tenant's aggressive behaviour when they were confronted about their dog.

In the Landlord's correspondence letters to the Tenant, I can see that ARS states to the Tenant that a "final warning letter was issued [to the Tenant] on February 21, 2025, detailing similar complaints".

On March 10, 2025, tenant from unit nine complained that the Tenant's dog is attempting to attack their dog.

On March 11, 2025, TD, from unit four, sent a complaint to the Landlord, in writing, about various grievances. TD's testimony at the hearing was that, prior to March 12, 2025 (when the Notice was issued), the Tenant would allow their dog to attack their dog, without intervening, and when they attempted to get between the two animals the Tenant became aggressive.

Further, in their complaint email to the Landlord, TD complained about the Tenant's dog barking "all the time into the night". At the hearing, TD testified that noise disturbances became worse after March 12, 2025.

When viewed individually, the incidents described by the complainants may or may not be sufficient to justify an end to the tenancy. However, the collective impact of the various incidences of a similar nature (the Tenant's dog disturbing residents without the Tenant attempting to resolve the issue and becoming aggressive in the face of complaints, and noise disturbances at irregular hours) make it clear that the Tenant's conduct constitutes an unreasonable disturbance to the other occupants of the small Rental Building, as well as the Landlord's agent who must manage the building and provide peace and quiet enjoyment to all residents of the Rental Building.

I have not been provided with any reason why multiple different residents in a small building would provide similar complaints about disturbances by the Tenant and their dog.

In *Senft v Society for Christian Care of the Elderly*, 2022 BCSC 744 [Senft], Justice Wilkinson states that arbitrators must interpret section 47 of the Act in a manner that is

consistent with the text, context and purpose of the Residential Tenancy *Act*. At paragraph 38 of the decision, Justice Wilkinson states: “several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the RTA.”

One of the main purposes of the *Act* is protection of tenants from the power imbalance that may exist between landlords and tenants. The Court in *Senft* stated that the post-notice conduct of the tenant is also relevant in deciding whether an end to tenancy is justified.

In this case, I was not provided with evidence that the post-notice conduct of the Tenant improved. On the contrary, the Tenant responded to the Landlord’s emails in an aggressive manner (as evidenced by the correspondence records between the parties). Further, both TD and ARS provided undisputed and affirmed evidence that on the date of the hearing, the Tenant was overheard threatening either a building resident or a third-party.

For the above reasons, I find the Notice was properly issued under section 47(1)(d)(i) of the *Act*. I have already found that the Notice complies with the form and content requirements of section 52 of the *Act*.

For the above reasons, I would also uphold the Notice, dismiss the Tenant’s application, and grant the Landlord’s application for an Order of Possession.

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 not been long-standing, suggesting the Tenant may not need additional time to vacate the Rental Unit. The Tenant did not attend the hearing to provide evidence to the contrary. The Landlord’s agent testified that the Tenant does not suffer from any physical disabilities, and they do not have a child. However, I can see in their application that the Tenant stated that they suffer from mental health issue. I also note that the Tenant has a pet. For these reasons, the Tenant may need additional time to vacate the Rental Unit. The effective date of the Notice in this case is April 30, 2025.

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

The Landlord did not claim their filing fee. Therefore, I make no orders with respect to the Landlord’s filing fee.

The Tenant’s claim for an order of compliance from the Director is dismissed, without leave to reapply. The Tenant did not attend the hearing to provide evidence for why an

order under s. 62 of the *Act* is warranted. In their application, the Tenant was asked to explain why they made this claim, to which the Tenant responded with: “[ARS] has been violating my right to quiet enjoyment with malicious evictions and notices I have asked her for my mental Health to just not go to housing court but she has denied”. As I have upheld the Landlord’s Notice, and as the Tenant did not provide evidence for this claim by attending the hearing, I find the Tenant’s claim that their right to quiet enjoyment was breached, by ARS’ action of issuing an eviction notice to be meritless. The claim is therefore dismissed, without leave to reapply.

Conclusion

The Tenant’s application is dismissed, in whole, without leave to reapply. The Landlord’s application is granted.

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

Date: April 25, 2025

Residential Tenancy Branch