DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Application for Dispute Resolution under 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) and an extension of the time limit to dispute the One Month Notice
- an order for the Landlord to make repairs to the rental unit
- authorization to recover the filing fee for this application from the Landlord

The Landlord applied for:

- an Order of Possession based on the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice)
- authorization to recover the filing fee for this application from the Tenant

Both parties acknowledged being served with the others hearing notices, and with the hearing notices provided by the RTB, on time, and provided evidence as proof of their service.

The Tenant acknowledged being served with the Landlord's evidence sent by registered mail on March 13, 2025.

The Landlord acknowledged being served with the Tenant's evidence sent by email on March 17, 2025. However, the Landlord argues that the Tenant served this evidence late according to the deemed received provisions of the Regulation and Rules of Procedure, and that their own circumstances ultimately led to them being unable to review the evidence before the hearing.

The Landlord claims that they did not actually receive the email dated March 17, 2025, until a week later, and by that time they were ill and could not review the package. The Landlord did not explain the nature of their illness nor why it prevented them from reading the documents they had been emailed.

The Tenant explained that they had retained counsel for this proceeding and sent the evidence as soon as it had been compiled and reviewed with their lawyer. The evidence was sent by email by the Tenant's counsel, two days before the two-week deadline, but

one day after the ‘deemed receipt’ deadline which adds an additional three days for service by email.

I am not convinced by the Landlord’s testimony that the Landlord would be unfairly prejudiced by my acceptance of the Tenant’s evidence, nor am I convinced that it is reasonable to exclude this evidence based on the Landlord’s claim that they did not receive the email within the service timeline.

I find that the Landlord’s failure to check their email for over a week, after expressly requesting that they only be served with documents by email, is not reasonable, and is no fault of the Tenant’s. I further find that the Landlord’s illness, while regrettable, is no fault of the Tenant, and without evidence of hospitalization or some significant impact on their vision or reading comprehension, ultimately is not sufficient reason for their failure to review the documents in the more than two weeks between the date it was sent and the date of this hearing.

For these reasons, I find that the Landlord is not unfairly prejudiced or otherwise disadvantaged by my acceptance of the Tenant’s evidence.

I further note that the Landlord made specific references to pieces of the Tenant’s evidence during their testimony in this proceeding, which indicates that the Landlord did in fact review the evidence and prepare their response for this hearing.

Preliminary Matters

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Under Rule 2.3, the following claim of the Tenant is dismissed with leave to reapply, as it is not related to the most urgent claims about the One Month Notice to end tenancy:

- an order for the Landlord to make repairs to the rental unit

I make no findings on the merits of this claim. Leave to reapply is not an extension of any applicable limitation period or time limit.

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

Section 47 of the Act states that a landlord may issue a One Month Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. After receiving a One Month Notice, the tenant may, within ten days, dispute the notice by filing an application with the Residential Tenancy Branch.

The Landlord served the Tenant with the One Month Notice on January 1, 2025. The One Month Notice states that the effective date of the Notice is February 2, 2025.

However, in accordance with section 47(2) of the Act, the earliest possible effective end tenancy date for a One Month Notice served on January 1, 2025, is February 28, 2025.

The Tenant testified that they made an application to cancel the One Month Notice on January 2, 2025. The parties attended a hearing for this related file (file number noted on cover page of this decision) on January 28, 2025. Both parties submitted a copy of the Decision from the previous arbitrator as evidence for this proceeding.

In the Decision dated January 28, 2025 (the previous decision), the arbitrator found that the Tenant failed to comply with the timelines for service of their hearing package, respondent instructions, and evidence to the Landlord, as set out by the Rules of Procedure. The arbitrator found that the Tenant's failures to comply with these service deadlines was a result of their own negligence and found that the Landlord would be unfairly prejudiced by proceeding on the matter on January 28, 2025, as they did not have sufficient time to review or respond to the Tenant's documents. Therefore, the matter was dismissed, with leave to reapply, with no findings being made on the merits of the One Month Notice.

Leave to reapply is not an automatic extension of the time limit for making an application under section 47 of the Act, and so I am required to determine if the Tenant is entitled to more time to file this application.

The Tenant reapplied to cancel the One Month Notice on January 30, 2025, two days after receiving the previous decision. The Tenant served the Landlord with their hearing package and respondent instructions on time.

The Tenant served the Landlord with their evidence package, after retaining counsel for assistance with this matter, on March 17, 2025. While this is technically one day late if the 'deeming provisions' for receipt of emailed documents under the Regulations are taken into account, I am not convinced that the Landlord did not receive the documents within two days of the email being sent rather than the 'deemed receipt' of three days, nor am I convinced that the Landlord would be unfairly prejudiced by my acceptance of these documents, per my findings in the introduction section of this decision.

The Tenant argues that they acted diligently to apply within the time period for their initial application, and that their mistake of service for that initial application is not a sufficient reason to dismiss this application and end the tenancy. The Tenant argues that the prejudice to the Tenant in not hearing this case on the merits of the One Month Notice far outweighs any prejudice to the Landlord for the delays in process which resulted from the Tenant's service error.

The Tenant acknowledged that they made a mistake by not diligently reading the instructions provided to them or serving the Landlord with their initial application on time. However, the Tenant contends that if the tenancy ended solely based on this error, and without determining if the Landlord has just cause to end the tenancy, this would be unjust and unfair to the Tenant.

The Landlord argues that the Tenant's mistake of service in the initial application resulted in prejudice to the Landlord by unduly delaying the proceeding. The Landlord claims that the Tenant purposely and knowingly failed in their service obligations to delay this proceeding and grant them additional time in the rental unit.

Section 66(1) of the Act says that an arbitrator may extend a time limit under the Act only in exceptional circumstances.

Tenancy Policy Guideline 36 provides additional guidance on extension of time periods, and provides the following considerations for an arbitrator to determine if exceptional circumstances applied:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

Based on the testimony before me and the findings of the arbitrator in the previous decision, I find that four of the six above listed criteria for exceptional circumstances have been met in this case.

I find that the Tenant did not willfully fail to comply with the time limit under section 47 of the Act, and had a bona fide intent to comply with the time limit. I find that the Tenant made their initial application to cancel the One Month Notice on time, and expediently (within one day of being served). I find that there is no evidence to support the Landlord's assertion that the Tenant purposefully failed to serve their documents in an effort to extend their tenancy, nor is this claim supported by the findings of the previous arbitrator.

I find that the Tenant did not take reasonable or appropriate steps to properly serve the Landlord with their documents, and therefore the Tenant's conduct did contribute to their failure to make this application on time. Had the Tenant met the service deadlines, their original application would likely have proceeded on the merits, and they would not have been required to reapply. The Tenant's failure to act reasonably by reading the various instructions provided to them and meeting the service deadlines set out by the Rules of Procedure, would have prevented the delay of proceedings and prejudice to the Landlord by this delay.

Despite these findings and the Tenant's ultimate role in delaying the proceedings and failing to meet the time limit under section 47 of the Act, I find that the Tenant's

application to cancel the One Month Notice does have merit, and that the Tenant made every effort to re-apply as soon as practical in the circumstances.

The Tenant re-applied within 2 days of being made aware of their service failures and their initial application's dismissal, and met their service deadlines for the hearing package, application, and respondent instructions. Although the Tenant's evidence was served one day late under the 'deeming provisions' of the Regulations and Rules of Procedure, I find that this is explained by the Tenant's action in seeking counsel for assistance in the matter, and ultimately does not result in any undue prejudice to the Landlord, who still had a full two weeks to review the Tenant's evidence before this hearing.

The Tenant's application to cancel the One Month Notice has merit, which is clear in the evidence submitted and the content of their application.

I find that overall, while I acknowledge that the Landlord has been prejudiced by the delay of this proceeding due to the Tenant's service failures in their initial filing, the prejudice to the Tenant by not proceeding or determining the merits of the One Month Notice far outweighs the prejudice to the Landlord by these delays.

The Tenant faces a possible end to their tenancy by my decision regarding the extension of this time limit, while the only consequence to the Landlord is a delay of proceeding which has already occurred regardless of what I decide. I find that on a balance, in light of the exceptional circumstances criteria met in this case, and the Tenant's initial application clearly being made on time, the fair and just course of action is to grant the Tenant an extension of this time period, and to make a decision based on the merits of the One Month Notice, and the testimony and evidence presented to me at the hearing.

For these reasons, I allow the Tenant's request for more time and this application will proceed. The Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice and obtain an end to this tenancy.

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

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

Facts and Analysis

This tenancy began on February 1, 2018, with a current monthly rent of $1002.92 due the first of each month, and with a security deposit of $500.00.

The Landlord issued the One Month Notice on January 1, 2025, for the following reasons:

- there are an unreasonable number of occupants in the rental unit;
- the tenant or a person permitted on the residential property by the tenant has
    - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
    - put the landlord's property at significant risk.

In the description section of the Notice, the Landlord gave the following details of causes which led to the notice being issued:

- The Tenant has sublet or allowed occupancy of a storage room in the rental unit (additional unapproved occupants)
- The Tenant has obtained large fish tanks without permission or payment of a pet damage deposit
- The Tenant acted aggressively and threateningly toward the Landlord in December 2024

While both parties gave testimony about some other issues which were not noted in the One Month Notice, I am prevented from considering any issue which is not identified on the Notice as a cause for ending this tenancy, and therefore will not refer to nor consider any testimony or evidence that is not related to the above listed issues.

The Landlord testified as follows. The Landlord claims that the Tenant has previously and currently allowed additional adult occupants to occupy the storage room of the rental unit, which they claim they Tenant has placed beds and added ventilation to facilitate occupancy. The Landlord claims that any more than two adults is an unreasonable number of occupants for a one bedroom rental unit.

The Landlord claims they have received multiple reports from other residents of the building about these additional adult occupants, however they did not provide any evidence or record of these reports. The Landlord claims to have photos of beds in the storage room, however these photos were not provided in evidence. The Landlord provided a written witness statement from their sister which claims they witnessed additional occupants in the storage room in December 2023, and on December 31, 2024.

The Tenant denies having any additional occupant in the storage room of the rental unit. The Tenant does confirm that their sister lived with them in 2022, as stated in emails, but she moved out years ago. The Tenant claims that the ‘occupant’ referred to by the

Landlord's witness statement on December 31, 2024, was their cousin, who was visiting the rental unit for new years eve. The Tenant provided an email in which they state the same to the Landlord after being advised of an inspection on that date. The Tenant testified that their cousin was there for the night, to celebrate the new year, but does not occupy the unit and was only visiting.

The Landlord claims that the Tenant has put the Landlord's property at risk by obtaining large fish tanks without permission and without the payment of a pet damage deposit. The Landlord claims they first saw the fish tanks in the unit some time in December 2024. The Landlord requested a pet damage deposit of ½ month rent, but the Tenant has not paid any deposit. The Landlord claims the fish tanks may cause damage to the unit and without a deposit the Landlord is at risk.

The Landlord provided copies of emails in which they request a pet damage deposit from the Tenant dated from late December 2024 to February 2025.

The Tenant testified that the fish tanks have been present in the rental unit since 2020, and that the Landlord has been aware of them since long before December 2024 and taken no issue nor required a pet damage deposit. The Tenant provided two dated photos from June and July 2020, including location of 'home' as identified by their phone's photo software, of the fish tanks in the rental unit.

The Tenant argues that the Landlord cannot claim or require a pet damage deposit years after the pets have entered the rental unit and without ever requiring one previously. However, to reduce any risk to their tenancy and after receiving the One Month Notice, the Tenant has since emptied the tanks and removed the fish.

The Landlord claims that the Tenant acted aggressively and threateningly towards them on December 9, 2024. The Landlord attended the rental unit with their brother to check in on a heating issue reported by the tenant. The Tenant was standing behind the Landlord which made the Landlord uncomfortable. When the Landlord asked the Tenant to move, he became angry, and was yelling and swearing at the Landlord. The Landlord has not felt safe visiting the rental unit since.

The Landlord claims to have a video of the event, but did not provide it in evidence. The Landlord testified that this was not the first occurrence of hostile behaviour by the Tenant, but did not identify any other date or incident.

The Landlord provided emails written by themselves and their brother about this incident and the history of the Tenant's hostile behavior, though no further incidents nor specifics were identified in any of these documents.

The Tenant denies acting aggressively or threatening the Landlord in any way on December 9, 2024, or at any time before that date. The Tenant testified that while the parties have had a tense relationship, the Tenant has never insulted, harassed, or made threats against the Landlord. The Tenant claims that on December 9, 2024, it was inn

fact the Landlord who became angry and hostile, and was yelling at the Tenant about where he was standing, and threatening to call the police on the Tenant. The Tenant testified that the Landlord stormed out and slammed the door, and the Tenant made no attempt to pursue the Landlord or otherwise contribute to the conflict.

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 says that a landlord may issue a one month notice to end tenancy if they have cause to do so.

Unreasonable Number of Occupants

Based on the evidence and testimony before me, and on a balance of probabilities, I find that the Landlord has failed to prove that there are an unreasonable number of occupants residing in the rental unit.

The Landlord made various assertions about the use of the storage room as a living space with bedroom furnishings, a number of different adult occupants over the years of this tenancy, and reports from other residents about the additional people living in the unit, however the Landlord failed to provide any documentary evidence which supports these claims, nor any sufficient detail in their testimony to convince me that their assertions have any merit.

The Landlord made general claims about two extra people living in the unit in 2023, and about the Tenant's "history" of denying having additional occupants. The Landlord did not identify specific dates or times which they suspected or knew of other occupants, nor any recent time aside from December 31, 2024, which was explained by the Tenant as a visitor in the unit to celebrate New Years eve.

The Landlord asserts that the person present in the rental unit on December 31, 2024, who the Tenant claims was a visitor, was in fact an occupant. However, the Landlord provided no evidence of this person living in the unit, such as evidence of their personal belongings in the unit or storage room, photos of the occupied storage room, or reports or testimony from other residents who have observed that person living there.

Overall, in the absence of any documentary evidence to support their claims, the Landlord has failed to prove on a balance of probabilities that anyone aside from the Tenant's and their children occupy the rental unit.

Serious Jeopardy to the Landlord's health, safety, or lawful right

Based on the evidence and testimony before me, and on a balance of probabilities, I find that the Landlord has failed to prove that the Tenant has seriously jeopardized their health, safety or lawful right.

The Landlord and Tenant have each claimed that the other person instigated the verbal conflict on December 9, 2024. I find it equally likely that the Tenant became angry with the Landlord or that the Landlord became angry with the Tenant, but it is clear there was a verbal altercation between the parties on that date.

As each party has testified about equally likely versions of events of the incident, this is a 'he said she said' circumstance, which means that the party seeking an outcome as a result of this incident has the burden to prove, above and beyond their testimony, that their version of events is the correct one. In this case, the Landlord seeks to end the tenancy because of this incident, and so bears the burden of proof.

I do not find the Landlord's evidence to be sufficient to prove that their version of events is the correct one. The Landlord has presented emails in which they wrote down their version of events, and a written statement from their brother, who is not a neutral witness and did not attend the hearing to give any affirmed testimony. The Landlord has not provided any documentary evidence of previous incidents, video or photo evidence, evidence of police reports or other documentation of the behaviour they claim has occurred prior to this incident.

To prove that this is a cause to end a tenancy a Landlord must prove there is a serious jeopardization to their health, safety, or lawful right by the actions of the Tenant. Per policy guideline 55, this means that the risk is so substantial and likely to occur, that the tenancy cannot possibly continue.

The Landlord has not identified what significant harm is likely to occur as a result of the verbal altercation with the Tenant on December 9, 2024. The Landlord has not identified any other similar incident, nor any similar or escalating behaviour of the Tenant after December 9, 2024 and before the Notice issued on January 1, 2025. I do not find a single verbal altercation between parties to be sufficient cause to end a tenancy, nor did the Landlord provide sufficient information to prove that this single argument represents a serious risk to their health or safety.

The Landlord also argued that because of this verbal altercation, they no longer feel safe entering the rental unit for inspections, which interferes with their lawful right to do so as a landlord. I find this insufficient cause to end the tenancy, as the Landlord is not precluded from assigning an agent or assistant (family member, hired agent), to conduct inspections of the unit on their behalf, and there is no indication in any of the evidence or testimony that the Tenant has harmed or threatened to harm the Landlord.

Significant risk to Landlord's Property

Based on the evidence and testimony before me, and on a balance of probabilities, I find that the Landlord has failed to prove that the Tenant has put the Landlord's property at significant risk.

The Landlord claims that the presence of the Tenant's fish tanks in the rental unit, and without a pet damage deposit, poses a significant risk to their property.

I will first note that the absence of a pet damage deposit is not a valid reason to end this tenancy under any of the causes listed in the Landlord's One Month Notice. The payment or non-payment of a pet damage deposit has no bearing on the actual risk of damage to a property by a pet.

I am not convinced by the Landlord's claim that they were unaware of the Tenant's fish tanks prior to December 2024. The Tenant has provided concrete photo evidence that the fish tanks have been present in the unit since at least June 2020. The Landlord has submitted no documentary evidence to discredit or otherwise override the Tenant's proof that their fish and tanks are not new to the unit, nor that the Landlord has not raised any issue with them for over 4 years until this Notice was issued.

I find that the Landlord is not entitled to now attempt to end the tenancy over a fish tank which has been present in the rental unit for years without issue. Further, even if I accepted that the Landlord just became aware of the fish tanks, the Landlord has not provided any compelling testimony or documentary evidence that indicates or proves to me that the presence or use of fish tanks puts the Landlord's property at significant risk.

The Landlord did not identify any specific reason why the fish tanks are a risk to their property, or why the use of water for a fish tank creates a greater risk of damage than taking a bubble bath, washing dishes, or gathering water in some other way within the rental unit. I find the Landlord has failed to prove that the presence and use of the fish tanks is a risk, let alone that it is a *significant* risk to the Landlord's property.

For the reasons above, I find the Landlord has failed to prove they have any sufficient cause to end this tenancy based on the One Month Notice.

The Tenant's application to cancel the Landlord's One Month Notice under section 47 of the Act is granted.

The One Month Notice of January 1, 2025, is 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 required to re-file this application as a result of their failure to properly serve their documents in their initial application (file noted on cover page), I do not find it fair or reasonable to award the Tenant the filing fee for this application to the detriment of the Landlord.

Therefore, the Tenant's application to recover their filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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

As the Landlord was not successful in their application, the Landlord's application to recover the filing fee paid for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application to cancel the Landlord's One Month Notice under section 47 of the Act is granted.

The One Month Notice of January 1, 2025, is cancelled and of no force or effect.

This tenancy continues until it is 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: April 3, 2025

Residential Tenancy Branch