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 One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 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

The hearing also dealt with the Landlord's Application for Dispute Resolution under the *Act* for:

- an Order of Possession pursuant to the Landlord's One Month Notice under section 55 of the Act
- authorization to recover the filing fee for the application from the Tenant under section 72 of the Act

Tenant BS along with his advocates MM and PL attended the hearing.

EL and legal counsel SC attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on March 20th, 2025, by registered mail in accordance with section 89(1) of the Act. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service, and the Canada Post tracking information indicates the package was picked up on March 20th. The Landlord acknowledged such service.

I find that the Tenant BS was served on March 26th, 2025, by registered mail in accordance with section 89(1) of the Act. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service, and the Canada Post tracking information indicates the package was picked up on March 26th. The Tenant acknowledged such service.

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

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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.

Evidence was provided showing that this tenancy began on January 1st, 2010, with a monthly rent of $776.00, due on the first of each month, with a security deposit in the amount of $325.00.

The Tenant submitted that the Landlord did not serve the One Month Notice to End Tenancy under the Act and submitted a picture pick-up notice with a notation “NO NAME” written thereon. PL submitted that registered mail requires that registered mail, under section 88(c) of the Act requires that it be addressed to a named person.

SC submitted that the Tenant has, on three separate occasions, been the cause of a water leak affecting the unit below, which is a commercial unit. A day care is set to open in the commercial unit and the Landlord is currently preparing the unit for occupancy.

SC submitted that the leaks occurred on or about April 16th, 2024, January 27th, 2025 and February 18th, 2025. Invoices from the plumber for each incident were submitted. On the first occasion, the problem was identified to be a lemon; on the second, a bottle cap; on the third, a lime. The Landlord submitted photographs of puddles of water on a concrete floor in the lower unit for the latter two leaks.

SC submitted that the Landlord has not investigated the possibility of mould but is concerned that mould may have been caused by the leaks.

EL testified that during the April 2024 incident the previous tenant in the commercial unit was in the process of moving out and was not significantly affected by the leak. During the latter two leaks the commercial unit was vacant.

EL testified that apart from the plumbers who dealt with the blockages at the time of each incident, the Landlord has not undertaken any additional work to remediate the leaks or determine if any such work is necessary, but may have to undertake further repairs if and when the ceiling of the commercial unit is opened up.

BS testified that in each incident, there was no overflow onto the bathroom floor. He testified that he called the Landlord for the April 2024 incident, but that for the January

and February 2025 incidents a plumber came to the unit to investigate. For the January incident, he was at home and verified that there was no overflow in the bathroom. For the February incident, he testified that his girlfriend was at home, and his girlfriend and later he checked and saw that there was no overflow in the bathroom.

Analysis

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

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.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

The Tenant submitted that the registered mail containing the Notice was sent without the Tenant's name on the package, and that it thereby does not qualify as registered mail, and the deemed service provision of section 90 of the Act cannot apply. The Tenant submitted a picture of the pick-up notice from Canada Post which indicated that there was "NO NAME". The tracking information provided by Canada Post indicates that the Notice to End Tenancy was picked up on on March 14th, and the Tenant made his application on that date.

Section 88(c) of the Act provides that a Tenant may be served by "by sending a copy by ordinary mail or registered mail to the address at which the person resides". It is evident that the package was not sent by ordinary mail. Despite the able submissions of the Tenant's advocates, I do not accept that registered mail requires the name of the individual to be included. However, I also find that omitting the name of the addressee is a deficiency in the manner by which the Notice was served. The presumption of service under section 90 of the Act is a rebuttable presumption (cf. *Zhao v Ochitwa*, 2022 BCSC 535). In this instance, there is no dispute that the Tenant received the Notice on March 14th. The lack of a name on the package gives rise to an uncertainty as to who the mail is intended for. And similarly, the lack of a name gives the impression that, whatever it is, it is unlikely to be urgent or important. Given the deficiency in the manner in which it was sent, I cannot find that the Tenant failed to receive it in a more timely manner due to his own negligence. I therefore find that the Notice was served on March 14th, 2025 and the Tenant disputed this notice on March 14th. I therefore find that the Tenant has

applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act and his application for additional time is therefore unnecessary. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

The Landlord's Notice to End Tenancy cites four separate bases: that the Tenant (or someone allowed on the property by the Tenant) has either:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- 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; or,
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

There are two difficulties with the Landlord's application: the first is causal, whether the water leaks can be solely or primarily attributed to the Tenant's actions or negligence. The second is sufficiency: whether the water leaks meet the test for one or more of the claimed bases for ending the tenancy.

I begin with the question of causation. I accept the Landlord's evidence that the blockages caused the leaks. However, the Tenant denies that on any occasion did the toilet back up and overflow. The April 2024 plumbing invoice notes that the water leak was caused by the toilet overflowing but does not provide any further detail as to how the plumber came to that conclusion. I found the Tenant's testimony clear and precise on the question of whether the toilet backed up and overflowed. On a balance of probabilities, I accept the Tenant's evidence that the toilet did not back up and overflow. It seems likely to me that the notation on the April 2024 invoice is an example of the plumber assuming the most common cause was the cause in this case. If the water leak did not occur due to the toilet backing up and overflowing, they must have originated from the piping coming from the Tenant's bathroom. It is to be expected that pipes will not leak when water remains in them – they are supposed to be watertight. Although the blockage may have been the immediate trigger for the leaks, I find, on a balance of probabilities, that a pre-existing flaw in the plumbing enabled the leaks. That being the case, I cannot find that the Tenant either put the Landlord's property at significant risk or caused extraordinary damage to the rental unit or residential property.

The first two bases cited on the Notice require interference, disturbance or jeopardy to either another occupant or the landlord. The Landlord did not contend that another occupant has been disturbed: for the latter two incidents, the affected unit was vacant, and EL testified that during the first incident, the previous tenant was in the process of

moving out and was not significantly affected. Nor can I find that the Landlord was interfered with or unreasonably disturbed. A water leak ordinarily could not be supposed to seriously jeopardize health or safety or anyone, and again, no other person appears to be personally affected by the leaks. Policy Guideline 55 gives as examples of a "lawful right or interest" the Landlord's right to access the rental unit and their insurance policy for the property. No similar right or interest was identified by the Landlord in their submissions, and none presents itself upon reflection.

The remaining basis is that the Tenant caused extraordinary damage. While the Landlord is understandably concerned that further damage may have been done, such damage has not been identified nor its extent. I find that the unblocking of a toilet – even on three occasions – is not extraordinary damage.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of February 21st, 2025 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

I note that these findings are not a vindication of the Tenant. He is fortunate that the unit below his own has been vacant or partially vacant during this period.

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Tenant's application under this heading largely duplicates his request to cancel the Notice. The Tenant also notes in his application a prior monetary award which he submits has not been paid. This issue was not raised in the hearing, and in any event, no further order can make a prior order more enforceable.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

Is either party entitled to recover the filing fee for this application from the other?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act. I order that this amount may be deducted from a future payment of rent.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of February 21st, 2025 is cancelled and is of no force or effect.

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

I grant the Tenant a Monetary Order in the amount of **$100.00** under the following terms:

Monetary Issue	**Granted Amount**
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	$100.00
Total Amount	**$100.00**

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

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: May 27, 2025

Residential Tenancy Branch