Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT (Tenant)
OPC, FFL (Landlord)

Introduction

This hearing was reconvened in response to cross applications.

The hearing dated November 14, 2022 dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") issued June 24, 2022 pursuant to section 47;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing of December 13, 2022 dealt with the Landlord's application pursuant to the Act for

- an order of possession based on the One Month Notice for Cause issued July 26, 2022 pursuant to s. 47; and
- authorization to recover the filing fee for this application from the Tenant pursuant to s. 72.

A participatory hearing was scheduled for 60 minutes on November 14, 2022. The Corporate Landlord President, AJ, (the "Landlord") and the Building Manager, GS, attended the hearing. Two of the three Tenants listed on the Tenancy Agreement, NR and KR also attended (the "Tenant"). Wherever the singular is used in the decision, the same shall be construed as meaning the plural if the context requires unless otherwise specified.

The Landlord and Tenants were given the full opportunity to be heard, present evidence, and call witnesses with regard to the Notice issued June 24, 2022. Their testimonies concluded at 54 minutes. In the remaining 6 minutes, the parties would have been unable to complete their testimonies and rebuttals concerning the One Month Notice for Cause issued July 26, 2022.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* (the "**Rules**") states:

> **7.8 Adjournment after the dispute resolution hearing begins**
>
> At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a

> hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

In order to fully consider the Landlord's Application, it was necessary for me to hear further testimony from the parties and their rebuttals. Based on the foregoing, I ordered that the proceeding be reconvened in accordance with s. 75 of the *Act.* Notices of Reconvened Hearings were sent to the parties with my Interim Decision. Both parties were directed to not serve any further evidence regarding these applications prior to the reconvened hearing.

In the first hearing, the Landlord confirmed receipt of the Tenants' Notice of Dispute Resolution (the "NDR") and evidence package. I find that in accordance with s. 88, 89, and 90 of the Act, the Landlord was duly served with the Tenants' application for dispute resolution with respect to the One Month Notice for Cause issued on June 24, 2022. The Tenants confirmed receipt of the Landlord's evidence.

The reconvened hearing scheduled for December 13, 2022, lasted 49 minutes, from 11:00 a.m. to 11:49 a.m.

The Landlord, (AJ), and the Building Manager (GS) as well as Tenants (NR) and (KR) attended the reconvened hearing. The parties confirmed their names and spellings. NR acted as spokesperson (the "Tenants") for her parents, the Tenants. At both hearings, the Landlord, the Building Manager, and Tenants confirmed their email addresses so copies of this decision could be sent to both parties after this hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* (the "Rules") does not permit recordings of any RTB hearings by any party. At the outset of both hearing the Landlord, the Building Manager, and the Tenants all separately affirmed, under oath they would not record the hearings.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the participator hearing of December 13, 2022, the Tenants confirmed receipt of the Landlord's NDR and evidence package for the Notice issued July 26, 2022. I find the Tenant was duly served with the Landlord's NDR and evidence.

Preliminary Issue – Severing Issues

The Tenants included an application for an order that the Landlord comply with the Act, Regulation and/or tenancy agreement (the "Claim for Compliance").

Rule 2.3 of the Rules states:

> **2.3. Related Issues**
>
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Applications was whether the tenancy would continue, or end based on the two (2) One Month Notices for Cause and in both the Landlord 's and Tenants' applications whether either party was entitled to recover the filing fee for the Applications. As such, I sever the claim for compliance from the Tenant's application and dismiss that claim with leave to reapply.

Issues to be Decided

Are the Tenants entitled to:

1) an order cancelling the Notice;
2) an order that the landlord comply with the Act;
3) recover the filing fee?

If the Tenants fail in their application, is the Landlord entitled to:

1) an order of possession;
2) recover the filing fee

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting May 1, 2014 ending April 30, 2015 thereafter continuing as a periodic month-to-month tenancy to the present day. Monthly rent is $1025.00 and is payable on the first of each month. The Tenants paid the Landlord a security deposit of $512.50. The Landlord still retains this deposit. The tenancy agreement lists three (3) Tenants, KR, HG, and NR.

June 24, 2022 One Month Notice to End Tenancy for Cause

Landlord

On June 24, 2022, the Landlord issued a One Month Notice to End Tenancy for Cause. Under "Reasons for the One Month's Notice to End Tenancy" the Landlord indicates the following reasons:

> The tenant or a person permitted on the property by the tenant has (check all boxes that apply).

The Landlord provided no further information under this category.

The Landlord also indicated that the Tenants were in:

> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under "Details of Cause" the Landlord writes:

> Tenants listed on the Tenancy Agreement are not occupying the unit. R is not residing at this address for more than one year and is not communicating with the Manager.

The Landlord argues that there are three (3) tenants on the Tenancy Agreement: NR; KR; and HG. The Landlord writes, in part:

> During the course of 2022 it has become apparent that one or more of these Tenants no longer reside at the property. They are not present and at least one of them, NR, has moved to the United States.
> …..
> As a result, at least one of the three Tenants on the Tenancy Agreement no longer resides in the unit. Additionally, the other two Tenants have not been at the unit for more than two years. One of the Tenants HG appears to have visited briefly at the beginning of the year. Otherwise, they appear to have moved out of the country. We have a live-in onsite manager, GS, who is aware of who is at the unit and at the building on a day-to-day basis. [reproduced as written]

Under "Complete the details below at time of service" the Landlord ticked:

> Email it to an email address you have provided as an address for service.

The Landlord argues that two (2) of the Tenants (mother and father) live in Iran and one (1) tenant lives in California. He states that the father, HG, died and NR, the daughter who lives in California, is fraudulently responding to emails in her father's and mother's names. He states that the email exchanges between him and HG, trace to an IP address in California. The Landlord submitted the IP address into evidence and questions the credibility of the Tenants.

The Landlord also stated the Tenants are using the rental unit for "resident status in Canada" when, in fact, they do not live here. The Landlord provided no evidence to support this allegation.

The 2014 tenancy agreement was signed by the Building Manager, GS, as the Landlord's Agent and by all three persons identified as "Tenants". GS denied that the Landlord required a "guarantor" and states that NR signed the documents as a Tenant. The Landlord stated that if a guarantor is required, the company has specific forms outside the tenancy agreement , for example, in the case of students renting.

GS states that the Tenants only "casually live there" [in the rental unit] and they are "always travelling". From September 2020 through October 2020, GS did not see HG (the father). KR (the mother) came back in November 2020 through December 2020 and only returned about a week before the November

14, 2022 hearing. She states the rental unit is "a place for them to come for a few days or weeks, it is not a stable home".

GS issued (3) three letters for "Breach of Material Term". The letters are dated: February 2, 2022; April 1, 2022; and June 1, 2022 and read:

> Landlord: **This letter is to inform you that you have failed to comply with a material term of your Residential Tenancy Agreement.** The breach is detailed as follows:
>
> | Tenants listed on Tenancy Agreement are not occupying the unit. |
> |---|

The Landlord points to Clause 13 and 19 in the tenancy agreement stating these clauses are "material terms" and prove the Tenants are required to "occupy" the rental unit and that they are in breach of a material term.

> 13: **ADDITIONAL OCCUPANTS.** Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative days in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.
>
> **19. OCCUPANTS AND INVITED GUESTS.** The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit, The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests. If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Act.

The Tenants continue to pay rent on time and the Landlord continues to accept rent. The Landlord confirmed the Tenants did not sublet the rental unit when they were travelling.

Tenant

NR testified when the lease agreement was signed, she was required to co-sign the tenancy agreement for her parents because they were new immigrants to Canada and they did not have established credit for a credit check or a previous tenancy history.

NR states that she has never lived in the one-bedroom rental unit with her parents but does come to visit. She lives in California with her husband and has done so since 2012. She stayed with her parents

for about a week to help them settle in and went back to her home in California where she works full time and has twelve (12) days off per year.

NR referenced an email chain dated June 27, 2022 between the Tenants and the Landlord and the Building Manager about the One Month Notice for Cause that the Landlord issued.

In the chain, GS, writes:

> Hi
> To clarify KR is not living at this address for longer then 2 years. I did not see him or discuss with him, he doesn't answer or return my phone calls.
> NR (Daughter) never lived at this address. She lives in the USA.

NR states that her father is alive and is currently in Iran. Her father had heart surgery in Canada. She did not have the dates but stated she could provide them if required. Her mother and father went to Iran in December 2021 to visit family and friends and her father took ill and required further heart surgery. He is recovering and when he is strong enough to travel, will return to Canada.

NR does not deny that she responds to emails on behalf of her parents. NR states that her mother and father do not write English well, her father is unwell, and so, with their permission, she responds on their behalf. She checks her mother's and father's emails regularly and if there is an issue that requires a response she discusses the matter with one or both of her parents and crafts the email response accordingly.

NR disputes the Landlord's allegation that her parents are "using" the rental unit for "Canadian status". She states, her parents have Canadian status, they are permanent residents.

NR states her parents pay rent on time and her mother, at the time of the call, was dialing in from the rental unit.

July 26, 2022- One Month Notice to End Tenancy for Cause

Landlord

In his written submission the Landlord writes:

> The Tenant is required to carry tenant's liability insurance under s. 29 of the Tenancy Agreement to "cover his property against loss or damage from any cause and for third party liability." The Tenancy Agreement further requires that the "Tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property or rental unit, or that may cause the landlord's insurance premiums to be increased."
>
> Despite repeated reminders to carry tenant's liability and property insurance, the Tenant has failed to do so. The Tenant was given letters from the Landlord's property insurance broker on February 22, 2020, February 14, 2021, and again on July 15, 2022. The Tenant

was given a letter from the Landlord on July 18, 2022 with a request for evidence of insurance. This was followed by breach letters on July 18, 2022 and July 25, 2022.

The Tenant was given a One Month Notice to End Tenancy for Cause on July 26, 2022 under the door of the Unit. The Tenant has not responded to the Notice. The Landlord is seeking an Order of Possession.

At the participatory hearing, the Building Manager confirmed the above reference information stating she put the Notice under the Tenants' door and it was witnessed by the Landlord. The Tenants confirmed the Notice various letters were found under the door when KR returned to the rental unit in November 2022.

I asked the Landlord why he served the One-Month Notice under the Tenants' door rather than by email given the extensive history of email communication between the parties, knowing the Tenants were not home? It was the Landlord's affirmed testimony that he did not know if the Tenants were home or not. He owns multiple of buildings and cannot keep track of who is home or not. The Landlord pointed to a photo of a pile of documents that were slid under the door of the rental unit confirming both the method of service and that the One Month Notice was served. He further stated that s. 88 permits a Landlord to serve documents by different methods.

Tenants

NR began her testimony by stating that the Landlord has issued several eviction notices for the same offences under the *Act* on her parents' floor. She is aware that three (3) notices inclusive were issued. One Tenant did not realize that the Notice could be disputed and moved. The other Tenant has a hearing on December 20, 2022. She wondered whether the Notices may have been issued to circumvent rent increase restrictions given current market value of the rental units.

NR stated that her parents were unaware of the Notice or the letters advising they must get renter insurance. She became aware of the Notice when the Landlord sent her the NDR by email. Once she was aware of what the issue was she immediately purchased insurance on behalf of her parents and submitted proof of insurance to the Landlord.

NR testified that both the Landlord and the Building Manager, have always been very responsive to emails and text messages. There is a long history of communication between the parties by email and text message and as indicated in the One Month Notice for Cause issued June 24, 2022 use email to send important documents.

Analysis

As these are Notices to End Tenancy, pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the onus falls on the Landlord to prove that the One Month Notices were issued on valid grounds and, moreover, the Landlord must prove the grounds on a balance of probabilities, meaning that "it is more likely than not that the facts occurred as claimed".

This is largely a dispute concerning the facts. Where one party submits one version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events.

In the absence of any documentary or independent evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. In these circumstances, the Landlord bears the burden of proving that the Tenant have breached material terms of the Tenancy Agreement.

The validity of the Terms of the Tenancy Agreement are not addressed in this decision. The analysis is limited to the grounds listed on the Notices and if the Notices meets statutory requirements. In both Notices, the Landlord alleges breaches of "material terms" of the tenancy agreement.

As this is a cross application concerning two (2) independent Notices issued by the Landlord, each Notice and the grounds will be dealt with separately.

June 24, 2022 Notice

The June 24, 2022 Notice was issued for two (2) reasons:

1. The tenant or a person permitted on the property by the tenant has (check all boxes that apply).

The Landlord also indicated that the Tenants were in:

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Each ground will be dealt with in turn.

1. The tenant or a person permitted on the property by the tenant has (check all boxes that apply).

The Landlord did not check any of the boxes beneath the heading and provided no further information under this category; therefore, there is nothing for me to consider.

2. 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 argues two (2) distinct issues: 1) the Tenants did not notify the Landlord, in writing, that one of the Tenants vacated the rental unit and 2) a material term of the tenancy agreement is that Tenants occupy the rental unit on a permanent basis.

I accept as fact three (3) persons are identified as "tenants" on the Tenancy Agreement and all three (3) persons signed the agreement. I accept as fact that the Tenants rented a one-bedroom rental unit.

NR testified that she never lived in the rental unit. In 2015, she stayed for a week to help her parents settle in and then went back to California where she lives with her husband. The Tenant testified that her name is on the Tenancy Agreement because the Landlord required a guarantor because her parents were new immigrants and they had no references; no rental history; and no credit history confirming income and financial suitability. NR also pointed out that the rental unit is a one-bedroom unit, unsuitable for three (3) adults.

The Landlord argues that co-signers/guarantors sign a separate document. He did not submit evidence of this alleged addendum document or the date the company first began using an addendum. The Building Manager testified that the Landlord did not require a guarantor and provided affirmed testimony that "NR is not residing at this address for more than one year" and when asked when the Building Manager first noticed that NR was not living in the rental unit her response was evasive.

Of significance is the information provided in an email chain from June 27, 2022, where GS wrote that NR "**never** lived at this address. She lives in the USA." [emphasis added]

As stated above, if two versions of events are presented, the onus is on the party bearing the burden of proof to provide sufficient evidence to confirm their version. I find on a balance of probabilities, that the person identified as "Tenant NR " was a guarantor not a "Tenant" as defined under the *Act.*

Notwithstanding the above, even if I were to accept as fact that NR was a Tenant and failed to provide notice upon vacating the rental unit, the Landlord, aware that the "Tenant" no longer resided in the rental unit, continued to accept rent payments, signaling that the tenancy continued thereby implicitly entered into a new tenancy agreement.

The Landlord further argues that HG died, and the only remaining Tenant is KR. NR states her father, HG, is alive and recovering from heart surgery in Iran, hoping to return to Canada when he has sufficiently recovered. I am uncertain of the Landlord's point. As confirmed above, KR is named on the Tenancy Agreement. The legislation provides if a Tenant dies and there is another Tenant on the tenancy agreement, the tenancy continues.

The Landlord argues that the Tenants, because they travel extensively, do not "occupy" the rental unit on a "permanent basis" and as such are in breach of a "material term" of the Tenancy Agreement ergo in breach of the Act and/or Regulations.

I have parsed out the Landlord's argument into two issues, an alleged requirement to "occupy" the rental unit on a "permanent basis" and what constitutes a "breach of a material term". The matters will consider them separately.

On the issue of "occupancy" on a "permanent basis", in deciding this matter, I turn first to the the definitions in the *Act* as set out below and the *Policy Guidelines*.

> **"tenancy"** means a tenant's ***right to possession*** of a rental unit under a tenancy agreement;

> **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant ***respecting possession of a rental unit***, use of common areas and services and facilities, ***and includes a licence to occupy a rental unit***;
>
> **"tenant"** includes
>
> (a) the estate of a deceased tenant, and
>
> (b) when the context requires, a former or prospective tenant. [emphasis added]

The Landlord confirmed that the Tenants continue to pay rent on time. Payment of rent is made to the Landlord "*in return for the right to possess a rental unit*".

> **"rent"** means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord ***in return for the right to possess a rental unit,*** for the use of common areas and for services or facilities… [emphasis added]

Neither the *Act*, the *Regulations*, nor the *Policy Guidelines* require a Tenant to "occupy" a rental unit on a "permanent basis"; rather, the *Act* gives the Tenant a "right to possess a rental unit". Further, neither the legislation nor Guidelines prohibit Tenants from traveling, either in the short or long term. Neither does extended or short term travel void the tenancy agreement.

The Landlord points to two (2) clauses in the Tenancy Agreement that reference "occupancy", specifically Clause 13 and 19 that are quoted previously.

The *Act* and the *Regulations* and the *Policy Guidelines* distinguish between persons in the rental unit who are "tenants" and those that are "occupants" or "guests". They are separate and distinct entities.

The *Act* s. 45.1 states "occupant" "*means an individual, other than a tenant, who occupies a rental unit".*

"Occupant" is further defined in Policy Guideline 13 subsection H.

> H. OCCUPANTS If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Both Clause 13 and 19 of the Tenancy Agreement reference "Occupants" and "Additional Occupants" of the rental unit. Based on the Landlord's testimony and evidence, KR and HG are "tenants" not "occupants" or "guests" and, therefore, have both rights and obligations under the tenancy agreement.

If the Landlord amended a tenancy agreement to include a "must occupy" clause or a clause restricting the number of travel days a Tenant is permitted, that clause would likely be deemed "unconscionable"[1], therefore unenforceable, and in contravention of the *Residential Tenancy Act* as well as other laws. Simply put a tenancy agreement cannot be in contravention of the *Act*. The *Regulation* is specific[2].

The Landlord argues that the Tenants are in breach of a material term of the tenancy agreement by not "occupying" the rental unit on a "permanent basis".

> Section 47 of the Residential Tenancy Act allows the landlord to end a tenancy for cause:
>
> **47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> …..
> (h) the tenant
> (i) has failed to comply with a material term, and
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Policy Guideline 8 explains "Unconscionable and Material Terms"[3]

> A material term is a term that the parties both agree is so important that **the most trivial breach** of that term gives the other party the right to end the agreement. [emphasis added]
>
> To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls on the person relaying on the term to present evidence and argument supporting the proposition that the term was a material term.

I find the Landlord failed to discharge the onus of proof as required on a balance of probabilities showing the Tenants were in breach of a material term of the Tenancy Agreement.

I grant the Tenant's Application to cancel the June 28, 2022 One Month Notice for Cause. The June 28, 2022 Notice is of no force and effect.

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[1] The *Residential Tenancy Regulation* defines "unconscionable" :

> **3** For the purposes of section 6 (3) (b) of the Act *[unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

[2] Part 2 "Requirements for Tenancy Agreements" in s. 11 states:

> **Tenancy agreement must comply with Act**
> **11** A landlord must ensure that any tenancy agreement entered into or renewed by the landlord on or after the date the Act comes into force complies with this Part.

[3] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl08.pdf

July 26, 2022- One Month Notice to End Tenancy for Cause

Service of Documents

Section 88 sets out permitted methods of **Service of Documents Generally** under the *Act.* These methods apply to documents, other than special documents, and include documents such as: evidence, notices to end tenancy a breach letter, a condition inspection report, or a forwarding address.

> **88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
> (a) by leaving a copy with the person;
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
> (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
> (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
> (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
> (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
> (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
> (j) by any other means of service provided for in the regulations.

The Landlord and the Building Manager confirmed the One Month Notice to End Tenancy for Cause dated July 28, 2022 and the breach letters were put under the door of the rental unit. In his written submission the Landlord wrote:

> The Tenant was given a One Month Notice to End Tenancy for Cause on July 26, 2022 under the door of the Unit. The Tenant has not responded to the Notice. The Landlord is seeking an Order of Possession.

Policy Guideline 12 provides as follows:

> The methods permitted for service of documents generally are:

…..

- **By attaching a copy of the document to a door or other conspicuous place *at the address where the person to be served resides at the time of service*.** If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence.

  A conspicuous place is one that is clearly visible and likely to attract notice or attention. *Placing a copy of the document under the door is not recognized by the Legislation.* [emphasis added]

To restate the above, "*Placing a copy of the document under the door is not recognized by the Legislation".* As the Landlord failed to serve the documents in a way recognized by the Legislation, I find the Tenants were not properly served with the documents. The Landlord's application for an order of possession is dismissed without leave to reapply. The July 28, 2022 Notice to End Tenancy for Cause is cancelled and is without force and effect. I make no findings on the merits of the application.

Notwithstanding the above and in further support of my finding, the legislation requires general documents such as notices to end tenancy or breach letters to be served *"at the address where the person to be served resides at the time of service".*

In affirmed testimony, when asked why the Landlord chose this delivery method over email, the well-established service method between parties, the Landlord stated that s. 88 of the *Act* allows him to do so and denied knowing that the Tenants were not occupying the rental unit at the time the Notice was served. Of interest, I note in the June 24, 2022 Notice, the Landlord wrote:

> We have a live-in onsite manager, GS, who is aware of who is at the unit and at the building on a day-to-day basis.

GS, the Building Manager, testified that that KR returned to the rental unit in November 2022 about one week prior to the November 13, 2022 hearing. The Landlord and the Building Manager delivered the Notice and the letters to the rental unit together. I also note, the Landlord sent the Notice of Dispute Resolution Proceedings by email to ensure the Tenants received the Notice in compliance with the requirements.

Based on the evidence cited above, the Landlord's good faith intention for delivering the Notice and breach letters to the rental unit as opposed to emailing the Notice to the Tenants' daughter as per past practice are called into question.

I find, on a balance of probabilities, the Landlord more likely than not intentionally delivered the documents to the rental unit to prevent the Tenants from filing a dispute resolution application with the RTB within the prescribed time. This is further supported by the fact, the Landlord, opposed the Tenants' application to amend the application to include disputing the 2nd One Month Notice and applied and argued for an Order of Possession based, in part, on the Tenants' failure to dispute the Notice within the prescribed time requirements.

In the hearing, the Tenants' raised the issue that three (3) notices were issued to separate units on her parents' floor, which may suggest a pattern. I have forwarded the Tenants' concerns to the director for review and to determine if a referral to Compliance and Enforcement is warranted.

Finally, on a separate matter, unrelated to the Applications, I note in the tenancy agreement, specifically Clause 10 "Arrears", the Landlord altered the administrative fee from $25.00 to $65.00 for late and/or NSF rent payments. For the Landlord's reference, I have included an excerpt from the *Regulations,* "Non-refundable fees charged by the landlord" as found in Part 1 s. 7(1)(d):

> **7** (1) A landlord may charge any of the following non-refundable fees:
> **…..**
> (d) subject to subsection (2), an administration fee **of not more than $25** for the return of a tenant's cheque by a financial institution or for late payment of rent. [emphasis added]

In summary, I grant the entirety of the Tenants' Application. The June 24, 2022 One Month Notice for Cause is cancelled and is of no force and effect.

Pursuant to section 72(1) of the Act, as the Tenants have been successful in the application, they may recover their filing fee from the Landlord.

I dismiss the Landlord's Application for an Order of Possession and request for reimbursement of the filing fee. The One Month Notice for Cause issued July 28, 2022 is cancelled and is of no force and effect. The Tenancy will continue until ended in accordance with the *Act*.

Conclusion

The One Month Notice dated June 24, 2022 is cancelled and of no force or effect.

The One Month Notice dated July 28, 2022 is cancelled and of no force or effect.

The Tenants are authorized to deduct $100.00 in reimbursement of the filing fee awarded for this application from rent payable to the Landlord for the month of January 2023. The Tenants' Application for the landlord to comply with the Act, is dismissed, with 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 *Residential Tenancy Act*.

Dated: December 19, 2022

Residential Tenancy Branch