Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNC, RR, PSF, LRE, OLC, FFT

Introduction

Both hearings dealt with the tenant's application, filed on August 4, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated August 26, 2022 ("1 Month Notice"), pursuant to section 47;
- an order allowing the tenant to reduce rent of $2,000.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The first hearing on January 3, 2023 lasted approximately 61 minutes from 9:30 a.m. to 10:31 a.m. The landlord intended to call two witnesses, "witness YC" and "witness LD," who were excluded from the outset of the first hearing. During the first hearing, witness YC left at 9:35 a.m. and witness LD left at 9:36 a.m. Neither witness testified or heard evidence from either party at the first hearing.

The second hearing on January 20, 2023 lasted approximately 78 minutes from 9:30 a.m. to 10:48 a.m. Witness YC attended the second hearing from 9:30 a.m. and left at 10:14 a.m., after his affirmed testimony was completed. Witness YC did not hear evidence from either party at the second hearing.

The landlord, the landlord's lawyer, the tenant, and the tenant's agent attended both hearings. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, the landlord's lawyer and the tenant provided their email addresses for me to send copies of both decisions to both parties after both hearings.

At both hearings, the landlord said that he owns the rental unit, and he provided the rental unit address. At both hearings, he confirmed that his lawyer had permission to represent him. At the first hearing, he identified his lawyer as the primary speaker for the landlord.

At both hearings, the tenant confirmed that her agent had permission to represent her. At the first hearing, she identified her lawyer as her primary speaker for the tenant.

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

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, both parties had an opportunity to ask questions. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties affirmed that they were ready to proceed, they wanted me to make a decision, and they did not want to settle this application.

At the first hearing, both parties were given multiple opportunities to settle at the beginning and end of the hearing and declined to do so. At the first hearing, the landlord and her lawyer and the tenant and her agent were provided with ample and additional time to speak privately with each other regarding hearing and settlement options.

At the second hearing, both parties were given multiple opportunities to settle at the end of the hearing and declined to do so.

At both hearings, I cautioned the tenant that if I dismissed her application without leave to reapply, I would uphold the landlord's 1 Month Notice, end this tenancy, and issue a two (2) day order of possession against her. At both hearings, the tenant affirmed that she was prepared for the above consequences if that was my decision.

At both hearings, I cautioned the landlord that if I cancelled his 1 Month Notice, I would not issue an order of possession against the tenant and this tenancy would continue. At both hearings, the landlord affirmed that he was prepared for the above consequences if that was my decision.

At the first hearing, the landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's agent confirmed receipt of the landlord's evidence. In my interim decision, I found that, in accordance with sections 88 and 89 of the *Act*, the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

At the first hearing, the landlord stated that he served the 1 Month Notice to the tenant by way of posting to the tenant's rental unit door on July 26, 2022, and by email on July 27, 2022. At the first hearing, the tenant confirmed receipt on July 27, 2022, by way of posting to the rental unit door and by way of email. In my interim decision, I found that, in accordance with section 88 of the *Act* and section 43 of the *Regulation,* the tenant was duly served with the landlord's 1 Month Notice on July 27, 2022.

At the first hearing, both parties agreed that the date the 1 Month Notice was signed by the landlord was incorrectly indicated as August 26, 2022, instead of July 26, 2022. At the first hearing, the landlord's lawyer indicated that this date was not corrected, and no other notices were served to the tenant with the correct date.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on January 3, 2023 was adjourned for a continuation after 61 minutes because it did not finish within the 60 minute hearing time. By way of my interim decision, dated January 3, 2023, I adjourned the tenant's application to an expedited second hearing date of January 20, 2023. During the second hearing, both parties affirmed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information,

from the RTB. At the second hearing, both parties confirmed receipt of my interim decision and notice of reconvened hearing.

At the second hearing, I reviewed the following information, contained on pages 4 and 5 of my interim decision, with both parties:

> *This hearing did not conclude after 61 minutes and was adjourned for a continuation. The landlord and his lawyer completed their testimony and submissions at this hearing. The landlord's lawyer stated that testimony from witness LD was not required at the reconvened hearing because it only relates to service.*
> *…*
> *I informed both parties that the reconvened hearing is only to hear the testimony from witness YC (which the landlord's lawyer estimated at 10-12 minutes), submissions from the landlord's lawyer regarding witness YC's testimony (which she estimated at 5 minutes), response submissions from the tenant and her agent (which the tenant's agent estimated at 20 minutes), and any response submissions from the landlord and his lawyer. I informed both parties that they would have full opportunities to present their testimony, submissions, and evidence, and the hearing could be adjourned again if it is not completed. Both parties affirmed their understanding of same.*
> *…*
> *Neither party is permitted to serve any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing. except for the landlord's witness YC. Neither party is permitted to file any new applications after this hearing date of January 3, 2023, to be joined and heard together with the tenant's application, at the reconvened hearing.*

At the second hearing, both parties affirmed that the above information was correct.

At the second hearing, I informed both parties that they would both have a full opportunity to present their submissions and respond to the other party's submissions. I notified them that they were not required to rush their submissions, to avoid any further adjournments. I informed them that if a further adjournment was required to allow additional time for submissions, it would be granted. At the second hearing, both parties confirmed their understanding of the above information.

In my interim decision, I noted the following information at pages 3 and 4, which was confirmed by both parties during the second hearing (my emphasis added):

I informed both parties that the remainder of the tenant's application, except to cancel the 1 Month Notice and to recover the $100.00 filing fee, was dismissed with leave to reapply. I notified them that the other claims were non-urgent lower priority issues, and they could be severed at a hearing. I informed them that this was in accordance with Rules 2.3 and 6.2 of the RTB Rules above. Both parties affirmed their understanding of the above information.

…

The remainder of the tenant's claims relate to an ongoing tenancy. If I end this tenancy, the above claims will be dismissed without leave to reapply. If I continue this tenancy, the tenant will have leave to reapply for the above remaining claims.

I informed the tenant and her agent that the tenant can file a new application and pay a new filing fee, if she wants to pursue her remaining claims in the future, and they are dismissed with leave to reapply. They affirmed their understanding of same.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Is the tenant entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness YC, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2021. Monthly rent in the current amount of $3,019.62 is payable on the first day of each month. The tenant paid a security deposit of $1,487.50 and a pet damage deposit of $600.00, and the landlord continues to retain both deposits in full. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit, which is the upper unit of a house. Witness YC and his wife, previously resided as tenants-occupants in the basement unit of the same house.

The landlord's lawyer stated that the landlord seeks an order of possession based on the 1 Month Notice. The tenant's agent confirmed that the tenant disputes the landlord's 1 Month Notice.

Both parties agreed that the 1 Month Notice indicates an effective move-out date of August 31, 2022, and was issued for the following reasons, which was read aloud by the tenant's agent during the first hearing:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

Both parties agreed that that 1 Month Notice states the following in the details of cause on page 2 of the notice, which was read aloud by the tenant's agent during the first hearing (names redacted for confidentiality of published decision):

> *"Since June 23, 2022 [tenant's name] has repeatedly and continues to interfered [sic] with the quiet enjoyment of [witness YC and his wife's name] through confrontation, loud, offensive, disruptive, and/or disparaging language and harassment.*
>
> *[Tenant's name] refuses to allow [witness YC and his wife's name] and the landlord, [landlord name], access to the garage common area for storage and access to the building control systems.*
>
> *[Tenant's name] has violated the pet agreement by having more than three cats."*

At the first hearing, the landlord's lawyer stated the following facts. The tenant's actions as per the landlord statement and the documentary evidence shows that the tenant has caused unreasonable disturbance, nuisance, and interfered, as per pages 2 and 3. The tenant runs the laundry machine at odd hours of the day. The tenant can be heard screaming loudly. The tenant installed cameras on common areas of the property. The tenant has not used common areas peacefully with other tenants. In paragraph 17 of the tenancy agreement, the tenant has breached the noise and disturbance behaviour

for quiet hours between 10:00 p.m. and 9:00 a.m. The landlord is ending the tenancy as a remedy, as per page 8. Document 5 of the landlord's evidence shows the complaints that the landlord received from witness YC and his wife. The emails to page 35 show this. June 24, the first email in the second paragraph, talks about the noise at night and running laundry at 11:00 p.m. at night. It talks about the noise and swearing in the daytime. The tenant agreed to do laundry on certain days, but she does it at all hours of the night and causes disturbance. Regarding the backyard, the tenant has refused witness YC and his wife from using part of the yard. The common areas were not used peacefully with other tenants. On page 32, witness YC reported noise from the tenant, where the tenant threatened to killed her daughter, and he called the police. Page 33 shows that witness YC called the police for disturbance. Page 34 talks about the police and the noise. Witness YC and his wife moved out of their unit at the residential property because of the tenant's behaviour. They had a fixed term tenancy, but they had to move out and the landlord was not given any compensation.

At the first hearing, the landlord's lawyer stated the following facts. The landlord lost use of the property for 2 weeks and finally got another tenant to replace witness YC and his wife. The rent was decreased for the new tenants, from $1,800.00 to $1,500.00, because of the tenant's behavior. The lost rental income is in document 19 at pages 115 to 116 and the evidence regarding the old and new rent is there. The new tenant, "S," has made complaints in document 7. The tenant uses the parking area and there are photos of the tenant's car in the middle of the driveway. Page 37 is an email from the new tenant S, to the landlord, regarding damage to his car because of the tenant's parking, which is recurring behavior by the tenant. The landlord sent the tenants several caution notices as per document 8. Witness YC sent recordings to the landlord, with a description, which was sent to the RTB, regarding the noise from the tenant. There are approximately 10 to 15 recordings from witness YC. The Arbitrator should concentrate on videos 1,4,5, and 6, regarding the noise, stomping, voices, and kids stomping on the floor, disturbing witness YC and his wife below. There is a video of the tenant threatening. There is a video of the laundry being done past 10:00 p.m., which are the last two recordings. There are emails and a letter, regarding the mental distress that witness YC's wife faced, at pages 35 and 36. The landlord provided 7 caution notices. The tenant locked the landlord out of the mechanical room, which is not part of her tenancy. The tenant claims that she has exclusive use of the garage and yard. The tenant claims that the landlord cannot use these areas.

At the first hearing, the landlord's lawyer stated the following facts. On July 19, 2022, the landlord said that the tenant was causing significant interference, unreasonable disturbance, and violating the common area rules regarding the laundry. The landlord

provided caution notices on July 12 at page 43, and on July 4 at page 53. Regarding section 47 of the *Act*, term 31 of the tenancy agreement says that the tenant cannot change the locks or have exclusive use of the garage. Section 47(1)(e) of the *Act* refers to a caution notice. Residential Tenancy Policy Guideline 8 says that a material term does not have to be in the tenancy agreement if it is important to both parties and a breach would end the tenancy. The tenant has an unauthorized pet, as per document 13, which are emails where the tenant brought a dog, when she already has three cats at the rental unit. At page 69, paragraph 12, there is a material breach where the tenant is putting cameras in the exterior of the property, facing the common area driveway, as per page 72. The tenant said that she removed the camera and put in her car, but it is still facing the driveway, which is a breach of paragraphs 3, 18 and 25. The landlord cannot access the garage.

At the second hearing, the landlord's witness YC testified regarding the following facts in response to questions from the landlord's lawyer. He moved in on May 28, 2022, and lived at the rental property for 4 months but he was looking for a long-term rental. He moved out because of the harassment and bullying from the tenant. He was paying $1,800.00 per month in rent, plus additional utilities, to the landlord. The yard was a shared space. The tenant and her 3 children had the use of the upstairs area off the patio with the trampoline. He had use of yard on the side of the house, where there is a rock stone partition in the middle of the yard, as per his tenancy agreement. In the beginning, he and his wife could use the yard and their dog would play, but they would stay in their area of the yard. The tenant's youngest daughter, "I," played with witness YC's dog, and he thought it was ok because it was polite and social and they were new neighbors. The tenant's daughter I, asked if the dog could stay out and play with her, but he did not know her at the time, so witness YC said no. When things began to escalate, the tenant became territorial. The tenant would come home, sit in the yard, bully witness YC and his wife, and talk to the tenant's kids and friends regarding the situation. The tenant was slandering witness YC and his wife. The landlord told witness YC not to talk to the tenant and to avoid her, so he did not engage with the tenant, and he would turn the other cheek and walk away. The tenant would sit in the yard, set up her new equipment, and talk loudly and slander witness YC and his wife. The tenant did not give many verbal responses because witness YC and his wife did not engage with her.

At the second hearing, the landlord's witness YC testified regarding the following facts in response to questions from the landlord's lawyer. Witness YC's wife goes to bed early at 9:30 p.m., and while she was asleep, the tenant would run the run the laundry at 10:45 p.m. Witness talked to the tenant and asked her to do her laundry early before

9:30 p.m. because it was waking him, his wife, and their dog, and the tenant agreed but she continued to do laundry after that day, at 10:00 p.m. Witness YC was surprised to find the tenant's oldest daughter doing laundry one day and he told her that he had an agreement with the tenant, for her to do the laundry early, so she left. The next day, the tenant sent a slanderous long message to him. Witness YC recorded audio and written notes regarding the harassment and slander from the tenant. The tenant had three cats and shared a dog with her neighbor, and she would dog-sit for a few days. The slander and harassment were a daily event. Witness YC and the tenant shared a wall, and he could hear the tenant slander them. The tenant had her own hair salon studio at the residential property, she worked from there, and she would run a loud hair dryer at 9:45 p.m. Witness YC and his wife moved out because of the stress and reported it to the landlord each time. The landlord told witness YC that the tenant was suing him, so the landlord was not allowed on the property, and he told witness YC to write down everything and keep a paper trail. Witness YC called the police and started a paper trail regarding the harassment. Witness YC's wife was so stressed that she had to take stress leave, as per her doctor's note. Because of the stress leave, witness YC's wife was at home, hearing the constant noise throughout the day and the slander. Witness YC filed 3 separate police reports with the police non-emergency line to keep a paper trail. Witness YC asked for the police report last September 2022, and he is still waiting for it, because they said they are behind schedule.

At the second hearing, the landlord's witness YC stated the following facts in response to questions from the tenant's agent. There was a friendly relation to start with the tenant. The landlord told him, before he moved in, that the tenant is a single mom of three kids living upstairs and 1 kid is on the autism spectrum, so witness YC should expect to hear noise. The soundproofing was poor at the rental unit. The landlord told him that the tenant had to clean up the space in the garage, when witness YC asked for storage space. Witness YC cannot recall if the garage storage was included in his tendency agreement because the agreement was not in front of him during this hearing. The tenancy agreement said that the yard was a shared space between the tenant and him and his wife. The rock sticking out of the soil is the partition in the yard. On the right side, where there is a trampoline and stairs, is the tenant's space. He has the space on the other side of the rock. June 6, 2022 was not his first complaint. He knew that there would be daily noise with the tenant's pre-teen children. He heard the tenant constantly yelling at her kids. The tenant was yelling and verbally abusive towards her own kids. He could hear the tenant's hair dryer and talking in her hair salon. The tenant told him that she talked louder than him, so that her clients could not hear him talking. He could not hear his own television in the living room of his unit because the tenant would run her hair dryer for 10 to 15 minutes at 10:00 p.m. Around 9:45 or 10:00

p.m. in the night was not ok because his wife was sleeping but luckily her bedroom was at the other end of the unit, so she did not hear it as much. The commercial hair dryer may be louder than a regular hair dryer.

At the second hearing, the landlord's witness YC stated the following facts in response to questions from the tenant's agent. The landlord told him that the tenant had a salon business at home. The tenant told him that she had a salon, but she did not provide her work hours. The tenant left ant poison in the laundry room when there were no ants. He had two days to do laundry at the rental unit, which he did on Tuesdays and Saturdays. He did the laundry in the early mornings. The quiet hours at the property were between 10:00 p.m. and 9:00 a.m. or 10:00 a.m. The tenant's quiet hours before were between 10:00 p.m. and 9:00 a.m. He did laundry before 9:00 a.m. but he did not do it if he did not hear noise upstairs from the tenant, indicating that she was awake. He heard the tenant out on the patio with her female friend, one time in the four months he lived there. He recorded an argument between the tenant and her kid between 10:00 p.m. and 11:30 p.m., as her bedroom is above his bedroom, and the tenant threatened her kid to "shut up" and "be quiet" and she made physical threats to her kids. He knows the difference between the tenant's adult voice, which is distinctive, and the voice of her young children. The tenant's kids are between 10 to 15 years old. Witness YC was doing a barbecue with burgers under the patio, it started smoking, the tenant came outside and started videotaping him and said that he cannot cook under the patio and it was making her stuff smell and it would burn down. He went to grab his phone to record but the tenant left, and the barbecue was off. He called the police to make a complaint on the non-emergency line, regarding harassment. The police said they came by, but they did not want to disrupt the tenant's birthday party for her son. He agreed that the police should not interrupt the birthday party. He heard the tenant say that he called the police to disrupt the birthday party. The police said they would come another day. It is not witness YC's place to report things regarding the tenant's family dynamic to the police.

At the second hearing, the landlord's witness YC stated the following facts in response to questions from the landlord's lawyer. Day time noise was reasonable from the tenant, while he was living at the rental property. The noise from the tenant during quiet hours at night was not reasonable.

At the second hearing, the tenant's agent stated the following facts. The tenant is a single mom with three kids. Her daughter I is autistic and is prone to "outbursts and meltdowns." Her behaviour support plan is attached at the tenant's evidence, page 142. This was disclosed to the landlord before the tenant signed the tenancy agreement.

The tenant was told that the downstairs tenant was deaf so there would not be an issue. The tenant's daughter "H" is 15 years old, her daughter I is 14 years old, and her son "L" is 11 years old. Witness YC intimidated her daughter in the laundry room, so she sent him a text message. The landlord provided complaints and notices as well as videos and emails. The 7 videos provided by the landlord show poor soundproofing by the landlord. There are no times or dates in the landlord's videos. The videos show some fights and meltdowns, which are normal day-to-day issues between families in video 2. In video 6, there are children playing, and in video 3, the laundry machine is making a normal sound. Sometimes the fights were outside of quiet hours. There were only a few real traumatic incidents, which is normal when living with others at a property. At page 60, the tenant provided an email to the landlord, regarding the fight. In one of the landlord's videos, the tenant's daughter I, who is autistic, said "I will murder them." It was not the tenant that said this. In another of the landlord's video, the tenant's daughter H said "I will kill you" to her sister I, it was not the tenant making this threat. Yet, the landlord titled the video saying the tenant was threatening to kill her child. Page 22 of the landlord's evidence, regarding the fight between the two sisters (the tenant's children) shows the poor soundproofing by the landlord.

At the second hearing, the tenant's agent stated the following facts. Page 19 of the landlord's evidence is the tenant's email, saying that every word could be heard. It is the landlord's fault for not soundproofing. The tenant is entitled to speak and run her hair dryer. Witness YC did not call the police regarding the fights or killing threats, only regarding the barbeque, as it was near the tenant's paddleboards. In August 2022, the landlord installed soundproofing after the 1 Month Notice was served. It is unfortunate that witness YC's wife had anxiety, but this is due to the landlord's poor soundproofing. The 3 police calls to visit the property did not cause any concern for the police. The tenant requested the police reports but has not received them yet. The tenant made a statement at pages 139 to 140. The landlord said that the tenant breached the pet agreement in the 1 Month Notice. This is not a valid ground under section 47 of the *Act*. The tenant's copy of the parties' written tenancy agreement at page 6 is blank regarding the pet agreement details. Yet, the landlord filled out the section in his copy only, saying that only 3 cats are allowed. The landlord told the tenant that the rental unit was pet friendly, and the tenancy agreement was just a formality. The dog that the tenant watched at the rental unit would bark, but it is owned by the tenant's friend's daughter. The tenant can provide a video later, if necessary. Witness YC kept a dog in his unit that would chase the tenant's kids. The tenant did not unreasonably restrict use of the garage. It is not common property. The tenant grants access with notice and a reasonable request. The tenant sold her house and moved into the rental unit, so she needs a garage, and it is listed in the inspection report at pages 10 to 12. It is not a

material term of the tenancy agreement to use the garage and it is not common property in the tenancy agreement. The landlord told the tenant that she could use the whole yard before she signed the tenancy agreement. In June 2022, when new tenants moved into the property, the landlord said there would be a partition in the yard. The tenant provided an email on May 5, 2022, in her evidence package.

At the second hearing, the tenant's agent stated the following facts. There is an email, dated June 3, 2022, from witness LD, stating that the rock partition was not in the tenancy agreement. The tenant was told verbally by the landlord, before she moved in, that she had the use of the whole yard, which is the current arrangement with the new tenants that live downstairs now. There is no yard reference in the 1 Month Notice. Witness YC did laundry before 9:00 a.m., which is a breach. The tenant is a single mom of 3 kids, and she does laundry in the evenings when she is off. The landlord's videos have no date or time stamps. No videos were provide by the tenant for this hearing, but she can provide these in the future if required. Page 74 of the landlord's evidence shows that the security camera is unattached. The tenant denies harassing witness YC. Pages 135 to 138 are witness statements, regarding the cannabis smell and the cannabis paraphernalia found by the tenant on the property. The tenant asked to move the car 1 time and has footage of this video, so she can provide it later, if necessary. In November 2022, the landlord issued a notice to end tenancy to the tenant and the hearing will be held on April 18, 2023 at 9:30 a.m. As per section 52 of the *Act*, the date in the landlord's 1 Month Notice is wrong, as the landlord indicated an August date, when the notice was signed, with an effective move-out date in August as well, so this is not one month notice. On the morning of this hearing, the landlord sent an email to the tenant saying he wanted to move into the rental unit.

At the second hearing, the landlord's lawyer stated the following facts in response. The landlord installed soundproofing as per page 31 of the evidence. Witness YC said that the noise was beyond reasonable, which is why he moved out. The new tenants living downstairs moved out too. That is why the landlord wants to move in because he wants to avoid renting that space to other tenants. The tenant has refused for the landlord to use the garage and the mechanical room. The tenant is causing noise and restricting yard usage for other tenants. Section 55 of the *Act* says that the dates in the 1 Month Notice can be corrected and does not invalidate the notice. The landlord wants an order of possession against the tenant.

At the second hearing, the tenant's agent stated that the new downstairs tenants were there on the night before this hearing and were only residing there for a short-term rental.

Analysis

Burden of Proof and Rules

During the first hearing, I notified both parties that the landlord had the burden to prove the reasons for issuing the 1 Month Notice to the tenant. The *Act,* RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reasons on the notice.

The tenant, as the applicant, was provided with two documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, which contains the phone number and access code to call into both hearings, when she first filed her application and after the first hearing was adjourned to the second hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During the first hearing, I informed both parties that I had 30 days to issue a written decision, after the final hearing date.

The tenant received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the tenant to be aware of the *Act, Regulation*, RTB

Rules, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the tenant did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during two hearings, as per Rules 7.17 and 7.18 of the RTB *Rules.*

Both hearings lasted 139 minutes total. Therefore, the tenant had ample time to present her evidence and respond to the landlord's submissions. I repeatedly asked the tenant and her agent if they had any other information to present and if they wanted to respond to the landlord's submissions during the second hearing.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within 10 days of receiving the 1 Month Notice. In this case, the tenant claimed that she received the 1 Month Notice on July 27, 2022, and filed her application to dispute it on August 4, 2022.

Accordingly, I find that the tenant's application was filed within the 10-day time limit under the *Act*. Where the tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove the reasons on the 1 Month Notice. I informed both parties of the above information during the first hearing and they affirmed their understanding of same.

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the landlord provided sufficient evidence that the tenant and her children, who are people permitted on the property by the tenant, significantly interfered with and unreasonably disturbed other occupants and the landlord at the residential property.

I accept the submissions of the landlord's lawyer at both hearings and the landlord's documentary and digital evidence. The landlord's lawyer referenced the landlord's evidence during both hearings, pointing me to specific page numbers, provisions, details, and digital recordings.

I find that the landlord provided sufficient evidence in the form of notices, letters, emails, audio and video recordings. I find that the landlord repeatedly cautioned the tenant with notices about her behaviour, prior to issuing the 1 Month Notice to her.

I find that the landlord provided sufficient evidence that the tenant and her children engaged in loud noise, disturbances, yelling, screaming, and threatening to kill each other at the residential property. I find that this noise occurred not just during the daytime hours, but also during quiet hours established at the property, which both parties agreed were between 10:00 p.m. and 9:00 a.m. I find that this noise, as described by witness YC, is not reasonable expected noise between tenants sharing the same house, where noise travels between the basement and upper suites. I find that this was not just noise of regular activities of daily living, including talking, walking, and running a business from the rental unit.

The tenant agreed that the landlord's recordings were accurate when the tenant and her children were yelling and threatening to kill each other. "I will murder them" and "I will kill you," which were quoted and identified as accurate by the tenant's agent during the second hearing, are not regular family disputes that can be expected at a shared property, regardless of whether they were said by the tenant or her children. They are threats which can invoke fear for one's safety, particularly when they are heard by others, who live and share the same residential property. While I accept the tenant's submission that one of her daughters, I, is autistic and prone to emotional outbursts, the noise, fighting, and threats also involved the tenant and her other daughter, H.

I find that the behaviour of the tenant and her children affected witness YC and his wife, the former occupants that were residing in the basement at the same residential property. The landlord produced witness YS for cross-examination by the tenant at the second hearing. I find that witness YC and his wife were significantly interfered with and unreasonably disturbed, while residing at the residential property. I accept the affirmed testimony of witness YC that he and his wife had to move out of the property in 4 months, when they were intending to stay for a long-term rental. I accept the affirmed testimony of witness YC that his wife had to go on a medical stress leave, due to the behaviour of the tenant and her children. I accept the submissions of the landlord's lawyer that the landlord had to find another tenant, after witness YC and his wife moved out.

The tenant and her agent were given a chance to call witnesses at the first hearing and chose not to do so. Only witness YC was permitted to testify as a witness at the second hearing, because the landlord identified this witness at the first hearing and witness YC attended the first hearing, ready to testify, but there was insufficient time for him to do so. The tenant and her agent did not identify or call any witnesses to attend the first hearing, so they were not permitted to do so at the second hearing, which was an adjourned continuation of the first hearing. This was noted in my interim decision, dated January 3, 2023. The tenant had ample time from August 4, 2022, when she first filed this application, to January 3, 2023, a period of almost 5 months, to gather witnesses, evidence, and digital recordings and submit them for this hearing. The tenant's agent repeatedly stated during the second hearing, that the tenant could provide videos and evidence later "if necessary" or "if required," but the tenant failed to do so prior to the first hearing, as required.

I find that the tenant did not provide sufficient documentary or testimonial evidence to dispute the landlord's 1 Month Notice and evidence.

Neither the tenant, nor her agent, disputed the authenticity or contents of the landlord's documentary and digital evidence. The tenant's agent argued that the landlord's videos did not have date or time stamps, but he actually verified and agreed that the contents of those videos, particularly involving the tenant, her children, and the threats, fighting, and noise, were accurate.

The tenant agreed that the above incidents occurred at the residential property, resulting in calls to the police. The tenant's main defence was to blame the landlord for failing to properly soundproof the residential property, to blame witness YC for not

reporting the family threats to police, and to blame witness YC for violating the noise rules by doing laundry in the early morning.

The tenant's agent made requests for orders from the landlord, for future use of the yard and garage, at the residential property. I informed him that these matters were not being decided, only the 1 Month Notice was being decided.

As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

I find that the landlord has not waived his right to enforce the 1 Month Notice. Neither party indicated whether the tenant paid full rent to the landlord after the effective date of the 1 Month Notice. However, the landlord did not withdraw his 1 Month Notice and he continued to pursue an eviction of the tenant at both hearings on January 3 and 20, 2023.

In accordance with section 47(5) of the *Act*, this tenancy ended on August 31, 2022, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 31, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession against the tenant, pursuant to section 55 of the *Act*. The effective date of August 31, 2022, on the notice, has long passed, as the date of the second hearing was January 20, 2023.

At both hearings, I notified the tenant that I would be issuing a 2-day order of possession against her, if she was unsuccessful in her application. The tenant affirmed her understanding of same at both hearings and confirmed that she was prepared for the above consequences, as noted in my interim decision and this final decision.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. Although the landlord indicated the incorrect date of August 26, 2022, instead of July 26, 2022, a period of one month, for when the notice was signed, I find that this does not invalidate the notice. Section 52 of the *Act* states that a notice to end tenancy must be signed and dated by the landlord, which I find it was. I find that the landlord made an inadvertent error in the date the notice was signed.

The landlord affirmed that he served the 1 Month Notice to the tenant on July 26, 2022. The tenant confirmed receipt on July 27, 2022. I find that the tenant received the 1 Month Notice, reviewed it, responded to it, filed this application to dispute it on August 4, 2022, submitted evidence with her application, and brought an agent to represent her at

both hearings on January 3 and 20, 2023. Therefore, I find that the tenant was not prejudiced by the incorrect date for when the notice was signed. The tenant disputed the notice within 10 days of receiving it, and she had more than one month's notice to move out, as she had not moved out and had no plans to move out at the time of the second hearing on January 20, 2023, almost 6 months after July 27, 2022.

Since I have ended this tenancy, I am not required to make a decision regarding the remainder of the tenant's application, for an order requiring the landlord to provide services or facilities required by law, for an order restricting the landlord's right to enter the rental unit, and for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement. As noted in my interim decision (and above), these claims relate to an ongoing tenancy only. These claims are dismissed without leave to reapply.

The tenant's application for an order allowing her to reduce PAST rent of $2,000.00 for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply. The tenant is not entitled to obtain a monetary order for a FUTURE rent reduction, since this tenancy is ending. Therefore, the tenant can only pursue a claim for a past rent reduction of $2,000.00, if applicable, if she files a new future application and pays a new $100.00 filing fee, for same.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the $100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for an order allowing the tenant to reduce past rent of $2,000.00 for repairs, services, or facilities agreed upon but not provided, is dismissed with leave to reapply.

The remainder of the tenant's application 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 *Residential Tenancy Act*.

Dated: January 23, 2023

Residential Tenancy Branch