

DECISION

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy for Cause signed on October 7, 2024 (the “One Month Notice”);
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order pursuant to s. 70 restricting the Landlord’s right of entry;
- an order pursuant to s. 70 for authorization to change the locks to the rental unit;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

The Landlord G.C. files his own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after serving the One Month Notice; and
- return of the filing fee pursuant to s. 72.

E.B. attended as the Tenant. C.C. and G.C. attended as the Landlords. The Landlords called a witness, S.D., who was called upon to provide testimony but did not otherwise participate in the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The Tenant advises that she served their application and evidence on the Landlords, which the Landlord C.C. acknowledged receiving without issue. Accepting this, I find under s. 71(2) of the *Act* that the Landlords were sufficiently served with the Tenants’ application materials.

The Landlord C.C. advised having served her application and evidence, comprising two photographs, on the tenants. The Tenant acknowledged having received these

documents without issue. I note that the Landlord has provided more evidence than the two photographs to the Residential Tenancy Branch, namely being a copy of the tenancy agreement and the One Month Notice. I note both documents were included in the Tenants' evidence.

With respect to those documents acknowledged received by the Tenant, I find under s. 71(2) of the *Act* that they were sufficiently served on her and her co-tenant. The two documents in the Landlord's evidence that was not served on the Tenants, being the tenancy agreement and the One Month Notice, are in the Tenants' possession, such that I find there is no prejudice to them if it is included and considered. Accordingly, despite the Landlord's failure to serve the tenancy agreement and the One Month Notice, I will include and consider it.

Preliminary Issue – Severing the Tenants' Claims

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

The primary issue in dispute in the applications before me is whether the tenancy will end based on the One Month Notice. The other issues in the Tenants' application are relevant to ongoing tenancies, such that if the tenancy comes to an end based on the One Month Notice, the claims would be moot.

I find that the following claims are not sufficiently related to whether the One Month Notice is enforceable:

- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order pursuant to s. 70 restricting the Landlord's right of entry;
- an order pursuant to s. 70 for authorization to change the locks to the rental unit; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

Accordingly, these claims are dismissed. Should the tenancy continue, they will be dismissed with leave to reapply. If the tenancy ends, the severed claims will be dismissed without leave to reapply.

The matter proceeded strictly on whether the One Month Notice is enforceable.

Issues to be Decided

- 1) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?
- 2) Is either side entitled to the return of their filing fee?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on February 15, 2020.
- Rent of \$1,850.00 is due on the 15th day of each month.
- A security deposit of \$875.00 was paid by the Tenants.

As noted above, I have been given a copy of the written tenancy agreement by the parties.

1) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?

Under s. 47 of the *Act*, a landlord may end a tenancy for cause by giving at least one month's notice to the tenant.

Upon receipt of a notice to end tenancy issued under s. 47 of the *Act*, a tenant has 10 days to dispute the notice as per s. 47(4). If a tenant files to dispute the notice, the onus of showing the notice is enforceable rests with the respondent landlord.

Service of the One Month Notice and Form and Content

The Landlord C.C. advises that the One Month Notice was posted to the Tenants' door on October 7, 2024. The Tenant acknowledges receiving the One Month Notice on October 7, 2024. Accepting this, I find that the One Month Notice was served on the Tenants in accordance with s. 88 of the *Act* and received on October 7, 2024.

Upon review of the Tenants' application and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application disputing the One Month Notice on October 17, 2024. Accordingly, I find that the Tenants dispute the notice within the 10-day deadline imposed under s. 47(4) of the *Act*.

As per s. 47(3) of the *Act*, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the One Month Notice. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective

date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Alleged Grounds for Ending the Tenancy

The One Month Notice lists the following grounds for ending the tenancy:

- The Tenants 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; and
 - put the Landlord's property at significant risk (ss. 47(1)(d)(i) to (iii)).
- The Tenants or a person permitted on the property by the Tenant has engaged in illegal activity that has:
 - caused or is likely to cause damage to the Landlord's property;
 - adversely affected or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the residential property; and
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord (ss. 47(1)(e)(i) to (iii)).
- The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit or residential property (s. 47(1)(f)).
- The Tenant has assigned or sublet the rental unit without the Landlord's written consent as required by s. 34 of the Act (s. 47(1)(i)).

In describing the cause for ending the tenancy, the Landlords stated the following in the One Month Notice:

This information is required. An arbitrator may cancel the notice if the information is not true.

Details of the Event(s):
ON SEPT. 10, 2024, [REDACTED] RCMP AND ERT EXECUTED A SEARCH WARRANT AT [REDACTED] SC. AND FOUND A RIFLE SITTING IN THE LIVING ROOM WHICH WAS STORED UNSAFELY AND IS AN OFFENCE UNDER THE CRIMINAL CODE OF CANADA. A CROSS BOW WAS ALSO FOUND. THE TENANTS LIVE IN THE UNIT WITH TWO DOGS AND IT HAS BEEN REPORTED THAT THE DOGS ARE NEVER TAKEN OUT OF THE UNIT, WHERE THEY DEFECATE AND URINATE INSIDE THE UNIT, AND THIS HAS BEEN OCCURRING OVER ONE YEAR. THERE IS DOG FECEES EVERYWHERE IN THE UNIT, MAKING IT UNINHABITABLE FOR HUMANS AND ANIMALS. RCMP TEAM HAD TO WEAR HAZMAT COVER ALLS DURING THE RAID, AND THEY REPORT THAT THIS WAS ONE OF THE WORST CASES THEY HAVE SEEN. THE TENANTS ARE ENGAGING IN ILLEGAL ACTIVITY WITH A DRUG LAB THAT SHOWED A WHITE SUBSTANCE LEAKING DOWNSTAIRS ON TO ANOTHER TENANTS UNIT.

I have redacted personal identifying information from the reproduction above in the interest of the parties' privacy.

Submissions

The Landlord C.C. testifies that she was contacted by the RCMP on September 10, 2024 to advise her that they had conducted a search of the Tenants' rental unit. The Landlord C.C. indicates that she was informed that the Tenants were suspected of

being involved in gang activity and that the police officers conducting the search found the rental unit to be covered in dog feces and urine and was otherwise uninhabitable.

The Landlord called S.D. as a witness, who identified himself as a sergeant and testified that he is an RCMP officer with 25 years of experience. S.D. reports that a search was conducted of an adjacent rental unit in August 2024 where some 18 to 20 firearms were found as well as some kilograms of drugs. S.D. did not specify the drugs seized, though he says that the Tenant W.L. was found in the neighbouring unit in August 2024, such that the police then obtained a search warrant for the Tenants' rental unit. I am told by S.D. that Tenants' rental unit was search on September 10, 2024.

S.D. reports that he had a team conduct a search of the Tenants' rental unit, but that the officers had to back out of the search due to biosafety risks in the rental unit. S.D. reports that the entire rental unit was covered with dog feces and urine, such that the search team had to withdraw to put on respirators to complete the search. S.D. says he personally attended the rental unit on September 10, 2024 but had to withdraw due to the biosafety risk and that he did not participate in the search since he did not have his respirator at the time.

S.D. testified that an unsecured firearm was found in the rental unit on September 10, 2024, as well as an unsecured crossbow. I am told by him that no firearm charges have been filed against the Tenants, specifying that the Tenant W.L. is likely a drug user and may be involved in the illegal activities taking place next door.

I have been provided with two photographs, which S.D. says were taken during the search of the Tenants' rental unit. The Landlord C.C. confirmed having received the photographs from the RCMP.

The Tenant declined to ask questions of S.D. on cross-examination.

In response, the Tenant denies that she or her spouse are involved in drug trafficking. She alleges the RCMP have harassed her and her family in the past. The Tenant says that she and her spouse hold possession and acquisition licences, though she says that this has since lapsed. The Tenant argued that the crossbow in question is not a controlled firearm, and that the other firearm was non-functional and was in the process of being turned into a lamp.

The Tenant specified that the RCMP turned the place over when they conducted their search, damaging the door in question. The Tenant says that the SPCA did not take away her dogs and argued that the police officers were wearing respirators due to their use of tear gas when conducting the search in the adjacent rental unit. The Tenant says that the photograph of the dog feces in the rental unit was from a garbage bag opened by the police officers when they turned over the rental unit in the search.

The Landlord also alleges that the Tenants have sublet or assigned the rental unit without their consent. The Landlord C.C. testified that in June or July 2024, the Tenants advised her that they had let out one of the bedrooms in the rental unit. The Tenant

denies having this conversation, saying that she had a neighbour who was going through medical issues stay in the spare room for one month and did not charge rent.

Findings

I have reviewed the photographs provided by the Landlord. It is evident from the photograph that dog feces was allowed to accumulate within the rental unit. I accept that S.D. personally witnessed the extent of the issue when he was present at the rental unit on September 10, 2024 to conduct a search of the rental unit.

There was some argument by the Tenant that the RCMP spread out the dog feces from a garbage bag when the search was conducted. It is certainly conceivable that the police, when conducting their search, turned the place over to an extent where garbage bags were opened. However, the extent of feces shown in the photograph would greatly exceed what I would expect to be found in one garbage bag. I further note that there is mostly just dog feces, such that it is not a bag of garbage with other refuse.

I further note that the much of the feces is unbagged, such that I do not find it likely it was picked up by the Tenants after taking their dog for a walk and disposed of at the rental unit. Rather, it appears likely that the Tenants' dogs defecated in the rental unit. This was either left in place or scooped into a garbage bag if the Tenant is believed. Either way, I find that it likely the dogs were defecating in the rental unit.

Finally, it appears that dog feces were stepped on in the middle of the hallway shown in the photograph, such that it has become flattened and caked onto the flooring. In my view, the photograph would support the testimony from S.D., namely that significant dog feces were left throughout the rental unit. Since the feces is dried in place, I find it likely that the issue predated the search on September 10, 2024, which is when I accept the photographs were taken.

Based on the dog feces alone, I would uphold the One Month Notice. It goes without saying that permitting a pet to defecate in a rental unit poses a serious health and safety risk, as well as putting the Landlord's property at significant risk. Review of the photograph shows significant accumulation in the rental unit, such that I find it likely that the Landlord's property has been significantly damaged by the dog feces, which I would consider beyond ordinary damage expected during a tenancy. The issue will likely require more than mere cleaning to remedy.

In short, I find that the Landlord has established that the One Month Notice was properly issued under ss. 47(1)(d)(ii), 47(1)(d)(iii), and 47(1)(f) of the *Act* due to the dog feces that accumulated in the rental unit. I make no finding on the other grounds alleged by the Landlord.

Order of Possession

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the

landlord an order for possession. As that is the case here, I grant the Landlord an order of possession.

I was provided no submissions by the parties with respect to what the effective date of the order of possession ought to be. I accept that it should be short given the dog feces in the rental unit and the extent of the accumulation. Given the effective date of the One Month Notice is November 30, 2024, I make the order of possession effective for 1:00 PM on that date.

2) Is either side entitled to the return of their filing fee?

The Tenants were unsuccessful, such that I find they are not entitled to their filing fee. Accordingly, I dismiss their claim under s. 72(1) of the *Act*, without leave to reapply.

The Landlord was successful, such that I find they are entitled to their filing fee. Accordingly, I order under s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee. I direct under s. 72(2) of the *Act* that the Landlord withhold \$100.00 from the Tenants' security deposit in full satisfaction of their filing fee.

Conclusion

I dismiss the Tenants' application, in its entirety, without leave to reapply.

I grant the Landlord an order of possession under s. 55 of the *Act*. The Tenants and any other occupants shall provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on November 30, 2024**.

I grant the Landlord their \$100.00 filing fee, which they shall obtain from the Tenants by retaining that amount from the security deposit.

It is the Landlord's obligation to serve the order of possession on the Tenants. Should the Tenants fail comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court.

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: November 13, 2024

Residential Tenancy Branch