

Residential Tenancies Tribunal

Application 2024-0931-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 21 November 2024 at 9:09 AM.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.

Preliminary Matters

4. The landlord supplied an affidavit (L#1) with his application indicating the tenant was personally served on 21 October 2024 an Application for Dispute Resolution. The tenant did not dispute service. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The details of the claim were presented as verbal monthly rental agreement which commenced in 2015 with rent set at \$600.00 due on the 1st of each month. The rental premises is a 15-bedroom boarding house, and the tenant rents a room on the first floor, with a common area being shared with nine other tenants. There was dispute in relation to the security deposit. The landlord testified there was no security deposit collected as social services wouldn't pay it and the tenant agreed to do some cleaning at the time to offset, the tenant testified \$300.00 was paid for the security deposit paid by social assistance. As of the date of hearing the tenant continues to reside in the premises.
6. The applicant amended his claim to include hearing expenses.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicant has the responsibility to prove that the outcomes they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that their account of events are more likely than not to have happened.

Issues before the Tribunal

8. The landlord is seeking:
 - an order for vacant possession of the rental premises, and
 - \$20.00 hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also considered and referred to in this decision are sections 24 and 34 of the *Act*, as follows:

Notice where tenant contravenes peaceful enjoyment and reasonable privacy

24. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b), where a tenant contravenes statutory condition 7(a) set out in subsection 10(1), the landlord may give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises on a specified date not less than 5 days after the notice has been served.

(2) In addition to the requirements under section 34, a notice under this section shall

- (a) be signed by the landlord;
- (b) state the date on which the rental agreement terminates and the tenant is required to vacate the residential premises; and
- (c) be served in accordance with section 35.

Requirements for notices

34. A notice under this Act shall

- (a) be in writing in the form prescribed by the minister;
- (b) contain the name and address of the recipient;
- (c) identify the residential premises for which the notice is given; and
- (d) state the section of this Act under which the notice is given.

Issue 1: Vacant Possession of the Rental Premises

Landlord Position

11. The landlord testified that he issued the tenant a three month notice in May 2023. He stated that the tenant did not vacate the rental premises following being issued this notice, and promised to change his behaviors, and that he is untruthful. The landlord then testified that he proceeded to give the tenant a second notice on 13 September 2024 because the tenant did not change his behaviors.
12. The landlord testified the tenant was selling cigarettes from the rental premises and using the rental premises "as a store front". The landlord stated there were individuals

knocking on the outside door of the rental premises, “between 8 AM and 11 PM to buy cigarettes”. The landlord also testified that individuals were coming into the premises to do business with the tenant, often engaged in verbal disputes with the tenant in the living room (common area) of the rental premises, and there were times that there was a lot of “yelling and cursing”. In some instances, damage was caused. He testified that in one situation the window in the living room was broken during a dispute between the tenant and a person he ‘deals with’ and there have been damages to other windows as well.

13. The landlord testified that at least four of the other tenants of the rental premises have come to him voicing their concerns, that they are afraid of the tenant, and that the tenant is bullying them and has threatened them with violence. The landlord testified he had spoken with the tenant about his actions having a negative impact on himself and the other tenants on twelve separate occasions. The landlord testified that when the tenant was served with the termination notice on 13 September 2024, the tenant stated that if he had to move out ‘he would burn the place down’. The landlord stated that he does not wish the tenant any harm; but the situation has caused him a great deal of anxiety, he is 78 years old and just “wants peace in my house”.

Tenant Position

14. The tenant testified he rented a bedroom on the first floor of the rental premises and did not dispute the landlord had previously issued him a three-month termination notice in 2023; but stated that the landlord later “tore it up in front of me”. The tenant did not dispute he had received the termination notice dated 13 September 2024 requesting that he vacate the rental premises by 19 September 2024.
15. The tenant disputed that the landlord spoke to him on multiple occasions about his actions having a negative impact on the other tenants and noted that they were “all drunks”. He testified that he was not bothering the other tenants, that there are a couple of drunk people upstairs and that they don’t ever talk to him. The tenant also disputed being responsible for the damage caused to the windows of the premises and stated that on at least three occasions people walking by on the street smashed out the windows, and this had nothing to do with him, although he said the landlord blamed it on him and on one occasion he paid \$286.00 to have the fixed.
16. The tenant testified that he did not ever sell cigarettes “inside the door” but always outside. He noted that this was “already taken care of” and that he has given up selling everything. And he stopped selling cigarettes “a little over a month ago”. The tenant also stated that the premises was run down, rat infested and unclean, that he pays for all the cleaning supplies and does all the cleaning. Throughout the hearing the tenant voiced his intent to appeal this decision on multiple occasions and testified “I would move out today if we had a place to go”.

Analysis

17. In order to receive an order for vacant possession, a landlord must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the Act. The landlord provided a copy of a termination notice (L#2) which he

testified that he served on the tenant by posting it to the door of his room between 10:00 and 11:00 am on 13 September 2024. He provided pictorial evidence (L#3) in support of his testimony. L#2 is in writing in the form prescribed by the minister. It contains the name and address of the recipient. It identifies the residential premises for which the notice is given and states the Section of the Act under which it was given. It therefore complies with S. 34 of the Act, reproduced above.

18. L#2 was signed by the landlord. It states the date on which the rental agreement terminates, 19 September 2024. It was served to the tenant on 13 September 2024. It therefore complies with Section 24(1) of the Act.
19. The only remaining issue is whether or not the tenant violated statutory condition 7(a) as set out in subsection 10(1) of the Act, which reads as follows:

7. Peaceful Enjoyment and Reasonable Privacy -

- (a) The tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part.
20. *Policy 07-005: Interference with Peaceful Enjoyment and Reasonable Privacy* of the *Residential Tenancies Program* provides insight into what is considered interference. As stated within that policy, “Interference with peaceful enjoyment and reasonable privacy: an ongoing unreasonable disturbance or activity, outside of normal everyday living, caused by the landlord or the tenant or someone permitted on the premises by the landlord or the tenant.
21. In this instance, the landlord testified that the tenant was “using [his] house as a store front” and selling cigarettes, which was causing excessive disturbance to others in the premises as people were knocking on the outside door of the premises all day and night, verbal disputes often erupted in the living room (common area) with a lot of yelling and cursing, and in some instances, damages resulted. He further testified that multiple tenants have come to him voicing their concerns, that they are afraid of the tenant, and that the tenant is bullying and has threatened violence. The landlord testified he had spoken with the tenant about his actions having a negative impact on himself and the other tenants on numerous occasions. He also testified that the tenant became threatening and said that if he had to move out ‘he would burn the place down’ when served with the termination notice on 13 September 2024.
22. In contrast, the tenant denied selling cigarettes “inside the door” and stated that it was always outside, and this was “already taken care of” as he stopped about a month ago. He disputed being responsible for damages caused to the windows of the premises but stated that the landlord blamed him and on one occasion he paid to have a window fixed. He further disputed the landlord’s testimony that he was spoken to on multiple occasions advising that his actions having a negative impact on the other tenants and noted that they were “all drunks”. He testified that he was not bothering the other tenants, that there are a couple of drunk people upstairs and that they don’t ever talk to him.

23. The landlord testified to speaking with the tenant “at least” on twelve occasions . The tenant disputed being spoken to by the landlord about his actions and behaviors. He stated on three occasions, someone on the street threw something at the house damaging the windows.
24. Considering the evidence in its totality, I accept the testimony and evidence of the landlord that the tenant’s behavior is disruptive. The evidence presented supports the allegations that the tenant is interfering with the peaceful enjoyment and reasonable privacy of the other tenants. I agree with the landlord and find that the tenant’s behavior is negatively impacting the other the renters in the house. The termination notice is valid and the tenant should have vacated the property by 19 September 2024.

Decision

25. The landlord’s application for an order of vacant possession succeeds.

Issue 2: Hearing Expenses

26. The landlord claims \$20.00 hearing expenses. Along with his application, he supplied a copy of the hearing receipt (L#4). As the application succeeds, in accordance with Residential Tenancies Program Policy 12-001, the landlord claim for hearing expenses succeeds in the amount of \$20.00.

Decision

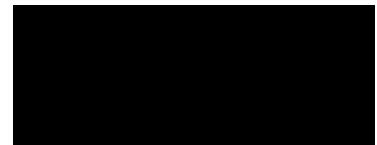
27. The landlord’s claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

- 28.. The tenant shall vacate the premises immediately.
29. The tenant shall pay to the landlord any costs charged to the landlord, by the Office of the High Sheriff, should the landlord be required to have the Sheriff enforce the attached Order of Possession.
30. The landlord is granted an order of possession.
31. The tenant shall pay the landlord a payment of \$20.00 for hearing expenses.

10 December 2024

Date



Michael Reddy, Adjudicator
Residential Tenancies Office