

Residential Tenancies Tribunal

Application 2024-0939-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 18 December 2024 at 1:50 PM.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.

Preliminary Matters

4. The landlords supplied an affidavit (L#1) indicating the tenant was personally served the application for dispute resolution / notice of rescheduled hearing on 6 December 2024 at 3:30 PM. The tenant did not dispute the service. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. The tenant requested for the hearing to be postponed. On the date of the hearing, the tenant had her physician contact the landlords to request a postponement of proceedings until after December 2024 citing health issues. During the hearing, the tenant again requested a postponement until after Christmas, at which time she would be better able to participate. In accordance with Residential Tenancies Policy 11-002, requests for postponements are at the discretion of the Director and can be granted in extenuating circumstances. Requests for postponements should be submitted in writing at least two working days prior to the hearing, with appropriate supporting documentation as required. The tenant did not submit a request for postponement or provide supporting documentation. It is also noted that the landlords requested to continue with the hearing. For these reasons, I declined to postpone and proceeded with the hearing.
6. The details of the claim was presented as a fixed term agreement which commenced on 1-June-2023, which has since converted to a monthly agreement (L#2). Rent set at \$1100.00 and due on the 1st of each month. There was a security deposit of \$950.00 collected on 1-June-2023 and is still in the possession of the landlords. The tenant remains in the apartment of the three-unit building as of the date of the hearing.

7. The landlords amended their application to seek hearing expenses.

Issues before the Tribunal

8. The landlords are seeking:
 - vacant possession of the rental premises, and
 - hearing expenses - \$20.00.

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 Residential Tenancies Policy 7-001, section 10, 24 and 34 of the *Act*.

Issue 1: Vacant Possession of the Rental Premises

Relevant Submissions

11. The landlords submitted 3 termination notices, all citing interference with peaceful enjoyment, s.24 of the *Act*. The first was issued on 4-July-24, which they noted was invalid as it contained an incorrect address(L#3). The second termination notice was issued on 16-September-24 with a stated move out date of 24-September-24 (L#4), and the third was issued on 30-October-24 with a move out date of 5-November-24 (L#5). The landlords testified that all notices were provided to the tenant personally on the dates of issue.

Landlord's Position

12. The landlords testified that the residential premises is a 3-unit building, and the tenant has been residing in one of the units since June 2023. The landlords themselves do not reside in the building; however, they submit that the tenant is interfering with the peaceful enjoyment and reasonable privacy of several other tenants in the building complex. The landlords note that they have received complaints from the tenants that reside in the other units in the building.
13. The landlords testified that issues began as early as two weeks following the tenant moving into the apartment in June-23 and provided copies of text messages (L#6) they had sent to the tenant regarding complaints of "loud music all night until 4am". At that time the landlords provided the tenant with a "warning" that interference with peaceful enjoyment would not be tolerated.
14. The landlords stated that in April-24 they were made aware of the level of police presence that had been occurring since January-24 at the premises. Given the circumstances they had been made aware of they advised the tenant they would not be renewing her lease due to interference with the peaceful enjoyment of the other tenants.

The landlords stated they attempted to work with the tenant as she reported having difficulty finding another place to live, but there continued to be disruption at the premises. They felt they had no choice but to issue a termination notice for interference with peaceful enjoyment.

15. The landlords testified that the main issue is the “constant” loud verbal arguments and fighting between the tenant and her son, whom they note has been living with the tenant even though he is not on the lease. These arguments and fights frequently lead to a police presence, sometimes more than once per day, with police often banging loudly on the apartment door and threatening to break it down. The first landlord also recounted one instance on 29-August-24, in which she engaged in a telephone conversation with the tenant’s son during which he was very aggressive and disrespectful towards her, and made several comments about his mother (the tenant) that caused the landlord to be concerned for the tenant’s safety.
16. In support of these assertions, the landlords provided a list of dates and times (L#7), that they had been made aware of, between October-23 to October-24 where the police had attended the residence of the tenant. This list outlines 29 dates on which the police attended the premises a total of 33 times; 15 of which are between the hours of 8:00pm to 8:00am. Along with this list, the landlords entered into evidence a number of pictures, video and audio files (L#8-9) to further demonstrate the level of disruption being caused. They maintain that these actions have unreasonably interfered with the peaceful enjoyment of other residents in the remaining units.

Tenant Position

17. The tenant did not dispute being served a termination notice on 30-October-24. She noted that there are four other tenants in two other units on the premises and feels that two of the tenants have no complaints, but those living upstairs from her unit are the people complaining. She asserts that the “man upstairs taps even when her grandson is playing”.
18. The tenant does not dispute receiving a ‘warning’ from the landlord in June-23 but noted that was a one-time incident and it was not a result of a party, but rather a late-night visit from relatives who were ‘screaming and crying’ due to a tragedy in the family.
19. The tenant did not dispute the fact that the police have been dispatched to her premises many times, the most recent being 15 December 2024. She stated that she has often contacted the police herself. She further testified that both her and her son have mental health and addiction issues, and she has issues with the police. She testified that her son no longer resides with her, and she has gotten help from the courts and her son can no longer visit unless he is “clean and sober”.
20. The tenant stated that she has nothing against the landlords, and they have had to put up with a lot, but she doesn’t want to be homeless for Christmas. She acknowledges that she has “probably disrupted the other tenants somewhat” but feels that it was not to the degree that would warrant eviction.

Analysis

21. In order to receive an order for vacant possession, the landlords must have issued a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlords provided copies of three termination notices (L#3-5). The first by their own admission was invalid, with two remaining (L#4, L#5).
22. As per Residential Tenancies Policy 7-001, *"if a termination notice is already in place and a second notice is issued by the same person whereby the termination date is later than that specified in the first notice, then the person issuing the second notice has thereby indicated that they are intending the tenancy to be extended to the date set out in the second notice. The party receiving this second notice is no longer required to abide by the termination date set out in the first notice..."*. As such, the first two notices are invalid, and only the notice issued on 30-October-24 (L#5) will be analyzed.
23. L#5 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 it was given. It identifies the section of the *Act* it was given under as section 24. It therefore complies with section 34 of the *Act*.
24. L#5 was signed by the landlord. It states the date on which the rental agreement is to terminate, and the tenant is required to vacate the premises. As testified by the landlord and confirmed by the tenant, it was served personally to the tenant in accordance with section 35(2)(a). It therefore complies with section 24(2) of the *Act*.
25. L#5 was issued on 30-October-24 and gives a move out date of 5-November-24, which is not less than five-days after the notice was served, and therefore complies with the timeline requirements under section 24(1).
26. 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.
27. Interference with peaceful enjoyment and reasonable privacy can be defined as ongoing unreasonable disturbance(s) or activities, outside of normal everyday living, caused by a landlord or a tenant or someone permitted on the premises by a landlord or a tenant. Unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include, but are not limited to excessive noise, aggressive or obnoxious behaviour, and threats and harassment.
28. The landlord testified that the tenant is interfering with the peaceful enjoyment and reasonable privacy of other tenants in the building, through the constant fighting between the tenant and her son which results in scream and yelling, as well as a noisy

police presence banging on doors at all hours of the day and night. They provided video, audio and pictorial evidence in support of their claims. I accept the testimonies given under oath by the landlords.

29. The tenant did not dispute the incidents put forward by the landlord, and she also admits to causing some disruption for the other tenants but does not feel it is to the degree that would warrant eviction. The tenant further presented mental health and addiction issues as the primary basis for the incidents outlined and notes that her son is currently not living with her. I accept the testimony of the tenant, and note the mitigating factors presented. Nonetheless, there were multiple incidents of fighting between the tenant and a person that she permitted in her residence that resulted in yelling and banging, and a noisy police presence that interfered with the peaceful enjoyment of other tenants.
30. Considering the evidence in its totality, the tenant's actions and those of the individual(s) she permits on the premises go beyond the bounds of acceptable behavior and are negatively impacting the other tenants in the building. I am satisfied on a balance of probabilities that the tenant has interfered with the rights of other tenants located in building, and that this interference was unreasonable. L#5 is therefore valid.

Decision

31. As the termination notice was valid, the tenancy ended on 5 November 2024. Insofar as the tenant is still residing at the premises, they are doing so illegally.
32. The landlord's application for an order of vacant possession succeeds.

Issue 2: Hearing Expenses

33. The landlords claim \$20.00 hearing expenses. Along with their application, they supplied a copy of the hearing receipt (L#10). 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

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

Summary of Decision

35. The tenant shall vacate the premises immediately.
36. 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.
37. The landlord is granted an order of possession.

38. The landlord shall retain \$20.00 from the security deposit to cover hearing expenses.

03 February-2025
Date



Michael Reddy, Adjudicator
Residential Tenancies Office