

Residential Tenancies Tribunal

Application 2024-0947-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 9:15 a.m. on 17-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The landlord submitted affidavit, stating that he had served the tenant with the notice of hearing electronically via text message to [REDACTED] on 4-October-2024 (LL#1). The landlord submitted proof of sent text message and stated that he used this phone number for communication with the tenant since the beginning of the tenancy. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.
5. There is a written month to month rental agreement which commenced on 1-February-2024. The landlord lives in upstairs apartment and the tenant lives in basement apartment. Rent is \$1100.00 per month, due on the first of each month. A security deposit of \$550.00 was collected on 31-January-2024.

Issues before the Tribunal

6. The landlord is seeking:
 - An order for vacant possession of the rented premises.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 34: requirements for notices and Section 7-5 of the *Residential Tenancy Policy Manual*: Interference with peaceful enjoyment and reasonable privacy.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

9. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant electronically via text message on 1-October-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 8-October-2024.

Landlord's Position

10. The landlord testified that the tenant has interfered with his peaceful enjoyment and reasonable privacy. The landlord state that, on several occasions in May, loud banging, kicking, and other disturbing noises were heard coming from the basement apartment during the night. The landlord approached the tenant to discuss these disturbances, expressing his concern about the ongoing noise and how it was affecting him. The landlord stated that he inspected the unit in May and discovered damage to the walls, including holes, which he believed were the one of source of the loud noises he had been hearing. The landlord stated that he was threatened by the tenant after the inspection, which made him feel unsafe, to the point where he has been unwilling to enter the apartment since. The landlord explained that he has not been able to have his daughter visit because of his fear of the tenant. The landlord further testified that the tenant was incarcerated for approximately three months and returned to the rental unit about a month ago. Since the tenant's return, the disturbances have resumed, with loud noises occurring on several occasions, again primarily during the night.
11. On the night of 1-October-2024, the landlord stated that he woke up at 4 a.m. to the sound of loud banging, kicking, and screaming from the basement apartment. He observed the tenant walking outside and while he asked him to stop loud noises, the tenant allegedly pointed a firearm at the landlord, verbally threatened him and stated that he will kill the landlord's dogs. This incident prompted the landlord to call the police. Later that day, the landlord served the tenant with a termination notice and stated that he is feared for his own safety. The landlord added that he is fearful and stays at his girlfriend house overnight rather than remain in the unit. The landlord stated that he could not have his daughter visit due to the tenant's behavior and threats. The landlord is seeking an Order of vacant possession.

Analysis

12. Section 24 of the *Residential tenancies Act* states:

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.

13. Section 34 of the *Residential tenancies Act* states:

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.

14. The termination notice was given on 1-October under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 8-October-2024. The termination date was given not less than 5 days after the notice was served and meets the requirements as set out in Section 34 of the *Act* as stated above. I find that the termination notice is a valid notice from a timeline perspective and technical requirements but has to be further analyzed for validity (see below).

15. The tenant was not present or represented during the hearing to dispute the claim. According to the Section 7-5 of the *Residential Tenancies Policy Manuel*, unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include but is not limited to the following: excessive noise, aggressive or obnoxious behaviour, threats and harassment. I accept the landlord's testimony that he addressed the issue of threats and ongoing loud disturbances, including loud noises at night, which in accordance with Section 7-5 of the *Residential Tenancies Policy Manual*, demonstrate an unreasonable interference with the landlord's peaceful enjoyment and reasonable privacy. These issues persisted through the tenant's occupancy of the unit, culminating in the events of 1-October-2024, when the tenant threatened the landlord again.


16. I accept that these ongoing issues were the reasons the landlord felt unsafe in his own unit. For those reasons, I find that the termination notice given on 1-October-2024 under the Section 24 of the *Act* is a valid notice.

17. I find that the tenant should have vacated the unit on 8-October-2024.

Decision

18. The tenant shall vacate the premises immediately.
19. 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.
20. The landlord will be awarded an Order of Possession.

October 18, 2024
Date



Oksana Tkachuk, Adjudicator
Residential Tenancies Office