

Residential Tenancies Tribunal

Application 2024-0967-NL & 2024-0985-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 18-November-24 at 9:01 am.
2. The applicant, [REDACTED], hereinafter referred to as the tenant, attended via teleconference.
3. The respondent and counter-applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
4. The following witnesses provided evidence via sworn affidavit and were available during the hearing for questioning: [REDACTED] (witness 1); [REDACTED] (witness 2); [REDACTED] (witness 3); [REDACTED] (witness 4); [REDACTED] (witness 5); [REDACTED] (witness 6); and [REDACTED] (witness 7). Two other witnesses provided evidence via sworn affidavits and were unavailable during the hearing for questioning: [REDACTED] (witness 8) and [REDACTED] (witness 9).

Preliminary Matters

5. The tenant submitted an affidavit of service along with proof (T#1) stating that the landlord was served with a notice of hearing electronically on 7-November-24. The landlord did not dispute this service. The landlord did not provide an affidavit of service; however, the tenant confirmed under oath that the landlord personally served him with a notice of hearing on the same day, 7-November-24. Service was provided in accordance with the *Residential Tenancies Act, 2018* (the *Act*) s.42(3).
6. The tenant made an application to determine the validity of a termination notice, and the landlord filed a counterclaim seeking an order of vacant possession. As a valid termination notice is essential to receiving an order of vacant possession, both issues are dealt with together below.
7. Approximately 20 minutes into the hearing, the tenant requested a postponement of the hearing. He felt that the information provided to him by the landlord on 7-November-24 contained "new allegations" that he had not been previously aware of, and they were disturbing to him as he considered them allegations of child abuse/neglect. He

requested a postponement to gather evidence to refute those particular allegations. The request was not approved based on the following:

- This tribunal's jurisdiction and authority applies where the relationship of landlord and tenant exists in respect of residential premises. The allegations to which the tenant is referring is outside of this scope and deemed beyond the purview of this tribunal. They will not be considered in this decision.
- In accordance with Residential Tenancies policy 11-002, requests for postponements can be granted in extenuating circumstances, and are to be submitted in writing at least 2-working days prior to the hearing with supporting documentation. The tenant did not submit any request for postponement in advance of the hearing.

Issues before the Tribunal

8. Validity of termination notice / vacant possession of the rental premises.

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 of the *Act*, as well as sections 24 and 34 of the *Act*, as reproduced below:

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

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

Requirements for notices

34. A notice under this Act shall

- be in writing in the form prescribed by the minister;
- 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: Validity of Termination Notice / Vacant Possession of the Rental Premises

Relevant Submissions

- 11. The tenant submitted two termination notices: the first issued on 24-September-2024 with a stated move out date of 30-September-2024 (T#2), and the second issued on 30-September-2024 with a stated move out date of 8-October-2024 (T#3). The landlord also submitted a copy of the notice issued on 30-September-24(L#1)

Landlord's Position

- 12. The landlord testified that the residential premises is 118-unit apartment complex, and the tenant has been residing in one of the units since before he took over as the building manager about four-to-five years ago. There is currently a verbal monthly rental agreement in place with the tenant. The landlord testified that on 30-September-24 he served the tenant with the termination notice (L#1/T#3) by slipping it under the door of the tenant's apartment. The landlord submits that the tenant is interfering with the peaceful enjoyment and reasonable privacy of several other tenants in the apartment complex.
- 13. The landlord provided nine witness statements in support of the claim from other tenants within the apartment complex. He noted that there have been other complaints, but some people will not come forward for fear of reprisals.
- 14. Note regarding witness statements: In some instances, the witness statements also contained information alleging possible criminal activity outside of the jurisdiction of the Act, and/or hearsay information. This information will not be referenced or given consideration when determining the validity of the termination notice. Only information directly witnessed and/or alleging direct interference with the witnesses own peaceful enjoyment and reasonable privacy will be considered.
- 15. Witness 1: (L#2) asserts that since 2015, he has been "*continuously and violently harassed, taunted and threatened*" by the tenant while residing in the same apartment building. He provides examples of events during which the tenant allegedly was: verbally abusive (i.e.: telling him to '*mind your fucking business*'); engaging in activities to deliberately disturb him and other residents (i.e.: playing a continuous recording of a baby crying in distress during hours where residents were attempting to sleep, attempting to deliberately distract his service animal by using squeaky toys, and scratching and knocking at his front door in the middle of the night); verbally threatening (i.e.: telling him to '*watch your back*'); threatening physical violence towards himself and others; threatening to slash peoples tires and vandalize their property; and walking to the roof of the building holding a rifle.

16. In addition, witness 1 states that the tenant has verbally expressed his opinion that dogs should not be allowed in the building, and that he has witnessed the tenant throwing dog excrement down the buildings back staircase on more than one occasion and emptying cups of "yellowish" liquid in the elevator, on the main stairs and in the main lobby. He states that the tenant had an individual on the premises that shot and struck witness 1's vehicle with a pellet gun from his apartment window on the 6th floor of the building, causing damage. He states that the tenant has on many occasions over the years physically threatened to harm him, with the most recent incident being on 23-September-24, while cleaning unit 415.
17. Witness 2: (L#3) asserts that the tenant has been harassing and verbally abusive to him on more than one occasion, and he has witnessed the tenant fighting with other tenants in the building who are afraid of him. He describes an incident where he was exercising by walking the floors of the building, and when he walked up on the floor where the tenant's apartment is located, the tenant came out screaming and yelling at him, telling him that he was not allowed to walk on that floor.
18. Witness 3: (L#4) asserts that he resides in an apartment unit neighbouring the tenant. He claims that the tenant has been harassing him since he moved into the building and warned him he was '*king of the floor as per his record in prison*'. He stated that he has recently "*put a peace bond on him for threats to [his] personal property*".
19. Witness 4: (L#5) asserts that she is scared of the tenant and wants him to stay away from her. She states that she keeps her apartment door locked all the time, and in the past year he has been coming to her unit begging food, money, cigarettes, etc. and while she has put 3 notices on her door, he continues to come back. She also noted one occasion in the landlord's office where he started yelling at her at the "*top of his lungs*" making her cry.
20. Witness 5: (L#6) asserts the tenant has been threatening towards her and her stepson, and that on 26-September-24 the tenant was aggressive and verbally abusive towards her when she went to visit her stepson in a unit close to the tenants. She stated that when she knocked on the door, the tenant came out of his apartment asking '*what the fuck are you doing here on the 6th floor?*'.
21. Witness 6: (L#7) asserts that she is a new tenant to the building, and upon just meeting the tenant had a concerning conversation with him as he claimed to have a gun that he called '*Leslie*' and he stated to her that he was not afraid to use it and would shoot anybody. She states that this was inappropriate and alarming and felt like he was trying to be intimidating.
22. Witness 7: (L#8) asserts that since moving to the building on 28-June-2023 she has been "*periodically yelled at and cursed on*" by the tenant, he has told her that she cannot use the elevator but has to use the stairs. She is elderly and as she lives on the same floor as the tenant, she fears leaving her apartment as she might meet him in the hallway.

23. Witness 8: (L#9) asserts that the tenant has been very aggressive towards her on more than one occasion, making her “*shake and cry*”, and notes that she keeps her door locked always so that he cannot get into her apartment.
24. Witness 9: (L#10) asserts that the tenant has engaged in aggressive behaviour towards her on more than one occasion over the past year. She provides an example of one incident which occurred on 18-September-24 when she left her apartment to take her dog for a walk and the tenant was in the hallway. She states that he began yelling at her saying ‘*your dog is never taken outside. Your apartment is full of dog shit and piss. I am going to call the health department and report you*’. The witness asserts that she is a elderly woman who lives alone and is fearful of going to do her laundry and taking her trash downstairs as she is afraid for her safety should the tenant happen to get into the elevator while she is there. She is considering a peace bond.

Tenant's Position

25. The tenant confirmed receiving the termination notice citing interference with peaceful enjoyment on 30-September-24, which was put underneath his door by the landlord. When asked specifically what he was questioning regarding the validity of the notice the tenant began by stating his concerns with respect to some of the allegations that had been noted in the witness statements, stating that they were false. He noted that he had gotten in touch with child protection and the police, that the allegations were disturbing and that he was getting statements from family and his child's mother to support him. As referenced in paragraphs 7 and 14, these allegations will not be contemplated by this tribunal.
26. The tenant denies that he has interfered with the other tenants' rights to peaceful enjoyment of the premises. The tenant testified that the day before he received the notice the landlord had told him things were fine; that he was doing some work for him. He made comments about the condition of his apartment, alleging cockroaches and that the apartments around him smelled bad like a dead body, and they needed to be sprayed. He did not respond or refute all of the assertions put forward by the witnesses; but did make several comments in support of his position.
27. The tenant categorically denied the allegations / statement submitted by witness 1.
28. In response to witness 3's statement, the tenant declared it to be false. He noted that the witness has been the one bullying him, that he has been trying to get the witness to leave him alone, that the peace bond was put in place so that the witness would leave him alone. He stated that the witness has been “getting on with this for 5 years now”.
29. In response to witness 4's statement, the tenant commented that it was only about a month ago that she had him come to her apartment to fix something and gave him a pack of cigarettes for his help.
30. In response to witness 5's statement he noted that “her son is a big lad”.
31. The tenant felt that witness 6 misunderstood his comments. He noted that witness 6 had a little girl, just as he does. He stated that he has zero tolerance for anyone who

would hurt children, and his comments were to note that he would hurt someone who messed with the kids.

32. In summary, the tenant noted that he didn't know what else to say, that he felt "*this is not right*" and this "*could have been done another way*".

Analysis

33. In order to receive an order for vacant possession, a landlord must have provided a tenant with a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The tenant submitted two termination notices. The first was issued on 24-September-2024 with a stated move out date of 30-September-2024 (T#2). The second notice was issued on 30-September-2024 with a stated move out date of 8-October-2024 (T#3/L#1).
34. 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 the first notice was invalidated, only the second notice, T#3/L#1 will be analyzed.
35. T#3/L#1 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*.
36. T#3/L#1 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 in accordance with section 35(2)(d) by placing it under the door of the tenant's residential premises. It therefore complies with section 24(2) of the *Act*.
37. T#3/L#1 was issued on 30-September-24 and gives a move out date of 8-October-24, which is not less than five-days after the notice was served, and therefore complies with the timeline requirements under section 24(1).
38. The only remaining issue to determining the validity of the notice is whether or not the tenant contravened statutory condition 7(a) as set out in section 10 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.

39. 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.
40. The landlord testified that that the tenant is interfering with the peaceful enjoyment and reasonable privacy of several other tenants in the apartment complex. He provided nine witness statements in support of the claim from other tenants within the apartment complex, and the details of their respective statements are outlined in paragraphs 15 to 24 above. While all statements varied with respect to specific examples, there was a large degree of consistency in the testimony of all parties with respect to the types of behaviour directed toward them by the tenant. Specifically, each reported one or multiple instances of aggressive, bullying, and threatening behaviour, in some instances over prolonged periods. Further, all witnesses demonstrated some degree of concern for their personal safety and well-being, as well as concern for the safety of others.
41. Considering the evidence in its totality, the tenant's actions 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 apartment complex, and that this interference was unreasonable. T#3/L#1 is therefore valid.

Decision

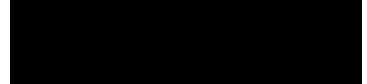
42. A valid termination notice was issued giving a move out date of 8-October-24. The rental agreement terminated on that date. Insofar as the tenant is still residing at the premises, they are doing so illegally.
43. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

44. The tenant shall vacate the premises immediately.
45. The tenant shall pay to the landlord any costs charted 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.

29 January 2025

Date


Michael Reddy
Residential Tenancies Office