

Residential Tenancies Tribunal

Application 2024-0983-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 1-November-2024 at 9:00 am.
2. The applicant, [REDACTED], hereinafter referred to as the landlord, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

Preliminary Matters

4. The tenant acknowledged she received notice of this hearing more than ten days beforehand. She advised, however, that she had not been provided with a witness list and had not known that the landlord intended to call a witness. The landlord acknowledged that he had not provided a witness list to the tenant or otherwise advised her he would be calling a witness as he had not understood that was required. The tenant did not consent to proceed without notice. I advised the landlord that if we proceeded with the hearing, he would not be able to call his witness, in accordance with the principle of procedural fairness. He elected to proceed. I left open the idea that the witness might be called at a later date.

Issues before the Tribunal

5. Should the landlords' claim for an order of vacant possession succeed?

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
7. Also considered and referred to in this decision are sections 19(1), 19(4), 24, and 34 of the *Act*, as reproduced here:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

- (a) where the residential premises is rented from week to week and the amount of rent payable by a tenant is overdue for 3 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 3 days after the notice is served on the tenant; and
- (b) where the residential premises is
 - (i) rented from month to month,
 - (ii) rented for a fixed term, or
 - (iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

...

(4) 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.

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

Landlord's Position

8. The landlord submits that he submitted a termination notice, that the notice is valid, that the date stated has elapsed, and that he is therefore entitled to an order of vacant possession. His termination notice was issued under s. 19 and s. 24 of the *Act*, for nonpayment of rent and interference with peaceful enjoyment, respectively. He testified that the tenant interfered with the right to peaceful enjoyment of himself and/or other tenants because of her possession of a dog, which is contrary to the rental agreement.

Tenant's Position

9. The tenant disputes the validity of the termination notices. She testifies that her rent was being paid by the Newfoundland and Labrador Housing Corporation, who only suspended payment due to the landlord's previous termination notices. Further, she says she does not have a dog, having given away the animal several weeks ago at the landlord's insistence.

Analysis

10. In order to receive an order for vacant possession, a landlord must have submitted a valid termination notice. To be valid, a termination notice must comply with all relevant sections of the *Act*. The landlord submitted a termination notice he issued to the tenant (LL#1).
11. LL#1 is a termination notice 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 is given. It specifies that it was issued under s. 19 and s. 24 of the *Act*. It therefore complies with s. 34 of the *Act*.
12. LL#1 is signed by the landlord. It states the date on which the rental agreement is to terminate. It was served on the tenant electronically in accordance with s. 35(2)(f) of the *Act*. It therefore complies with s. 24(2) and s. 19(4) of the *Act*.
13. The landlord testified that the tenant interfered with the right to peaceful enjoyment of himself and/or another tenant by possessing a dog. He said the dog scared people, had a bad smell, and created noise. No supplementary evidence was provided. I find that the landlord has not provided sufficient evidence to establish that the dog interfered with his or another's right to peaceful enjoyment of the property. Having a dog may be a breach of a material term of the rental agreement under s. 20(2), but s. 24 requires an unreasonable infringement of the rights of another. The notice is therefore invalid under s. 24. Whether or not the tenant owns the dog is irrelevant. As the witness the landlord

sought to have testify would only be able to speak to whether the tenant had a dog, I decided their testimony was unnecessary. The issue was also raised that the tenant may have had an unauthorized occupant in the premises but this, too, is irrelevant to the issue of interference with peaceful enjoyment.

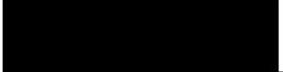
14. The tenant agrees that the rent was overdue by more than five days at the time the termination notice was issued. However, she said that this was a result of the landlord's actions, and that the landlord should not therefore be able to receive an order of vacant possession. She also provided documentary evidence supporting the assertion that her rent is fully subsidized through the disputed period (T#1).
15. Considering the evidence in its totality, I accept on a balance of probabilities the tenant's testimony that the rent payment has been delayed solely due to the landlord's actions. I agree with her submission that this should prevent the landlord from succeeding in their application for an order of vacant possession. Otherwise, preventing tenants from effecting payment would allow landlords to effectively bypass the general notice requirements under s. 18 of the Act, which is clearly contrary to the intent and purpose of the legislation.
16. LL#1, a termination notice dated 15-October-2024, is invalid.

Decision

17. The landlord's claim for an order of vacant possession fails.

18-November-2024

Date



Seren Cahill
Residential Tenancies Office