

Residential Tenancies Tribunal

Application 2024-1020-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was held on 26 November 2024 at 9:15 AM.
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, did not attend.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach her by telephone number supplied by the landlords ([REDACTED]) at 9:03 AM and 9:10 AM prior to 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 landlords submitted an affidavit with their application stating that the tenant was personally served notice of hearing on 15 November 2024 at 10:00 AM (L#1). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
5. The details of the claim were presented as a written monthly rental agreement which commenced in April 2023 with rent set at \$650.00 per month, utilities and furnishings included, and due on the 1st of each month. The landlords testified there was security deposit of \$287.50 collected in April 2023 still in their possession. The premises is a single occupancy bed-sitting room, in what is described as "boarding and lodging house" with 4 other occupied units on the floor of the tenant, 6 units upstairs and 7 units on the attached side . At the date of the hearing, the tenant continued to occupy the unit.

6. 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 applicants must establish that their account of events are more likely than not to have happened.

Issues before the Tribunal

7. The landlord is seeking a vacant possession of the rental premises.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
9. 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

Relevant Submission

10. The landlords provided a copy of a termination notice (L#2) to vacate the premises on 19 October 2024, which they testified was served on the tenant on 13 October 2024 by placing it on both the interior and exterior doors of her unit..

Landlord's Position

11. The landlords provided testimony that the tenant constantly has multiple visitors / guests in her unit late at night and in the early hours of the morning, that there are often upwards to 20 or more people going to her door every night, there are often guests coming and going between 2:00am and 5:00am in the morning, and there had been overnight guests for more than one-month at the time of the hearing. They testified that they have received multiple complaints from tenants in other units about fighting and loud noises coming from the tenant's unit. The landlords testified that the tenant is smoking in the unit, and the traffic and behavior of the tenant and her guests leads them to think that drug use may be occurring.
12. The landlords further testified that the behavior of the tenant and her guests is seriously affecting other tenants in the residence and there have been multiple complaints. In support of their position, the landlords provided an exhibit list (L#3), outlining 12 exhibits inclusive of various text messages from other residents of the property and camera footage. As examples, they have received reports from another resident that the noise levels in the early hours of the morning from the tenant's unit has resulted in their inability to sleep at night, and residents have reported being scared. One resident reported to the landlord that the tenant has frequently walked into her unit uninvited, sometimes as early as 5:30am, another resident requested cameras in the hallways as they reported fearing for their safety; and a third resident has reported being unable to stay in his own unit at times due to the noise and the tenants' guests frequently knocking on his window asking for cigarette's, food, etc. (L#3, exhibits 1 – 7).
13. The landlords testified that they now have cameras on both the exterior of the property and in the hallways of the property for safety reasons. The landlords provided camera footage (L#3, exhibits 8-11) showing evidence of guests / visitors going to and from the tenant's unit late at night and in the early hours of the morning, people coming from the tenant's unit in various stages of undress, and in one instance a man walking naked in the hallway.
14. The landlords testified that the tenant does not seem to understand the seriousness of her actions. When provided with the termination notice the tenant advised that she would be out by the 1st of November. However, when the landlord contacted her to confirm that she had or would be vacating the tenant did not respond. Following this, the landlords note that the tenant's actions caused them some concern on November 1st, as the tenant followed the landlord's daughter into the building and loitered around the doorway to her daughters unit, which is on another floor, for several minutes (L#3, exhibit 12).

Analysis

15. 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 landlords provided a copy of a termination notice (L#2) which they testified was served on the tenant by posting it to the doors of her rental unit. 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.
16. L#2 was signed by the landlord. It states the date on which the rental agreement terminates, 19 October 2024. It was personally served to the tenant on 13 October 2024, by affixing it to both the interior and exterior doors of her unit. It therefore complies with Section 24(1) of the *Act*.
17. The only remaining issue is whether 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.
18. *Policy 07-005: Interference with Peaceful Enjoyment and Reasonable Privacy of the Residential Tenancies Program* provides clear insight into what is considered interference. As stated within that policy, interference with peaceful enjoyment and reasonable privacy can be considered “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”.
19. In the present circumstances, I accept the evidence and testimony as provided by the landlords, and no contradictory evidence was provided. Considering the evidence in its totality, I accept on the balance of probabilities that the tenant has violated statutory condition 7(a) and has interfered with the other tenants right to peaceful enjoyment of the rental premises and has done so unreasonably. The termination notice is therefore valid.
20. As the termination notice was valid, the tenancy ended on 19 October 2024. Insofar as the tenant is still residing at the premises, she is doing do illegally.

Decision

21. The landlord's application for an order of vacant possession succeeds.

Summary of Decision

22. The tenant shall vacate the premises immediately.

23. 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.

24. The landlord is granted an order of possession.

18 December 2024
Date


Michael J. Reddy
Residential Tenancies Office