

Residential Tenancies Tribunal

Application 2024-1046-NL & 2024-1071-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 11-December-2024.
2. The applicants, [REDACTED] (tenant 1) and [REDACTED] (tenant 2), hereinafter referred to as "the tenants", attended by teleconference.
3. The respondents and counter applicants, [REDACTED] (landlord 1) and [REDACTED] (landlord 2), hereinafter referred to as "the landlords", attended by teleconference.
4. [REDACTED], witness for the landlords was called into the hearing.

Preliminary Matters

5. Tenant 1 testified that she served the landlords with the notice of hearing electronically on 5-December-2024. The landlords confirmed receipt of the document on that date. The landlords filed their own application against the tenants and had served the tenants previously by email to; [REDACTED] on 29-November-2024. The tenants confirmed receipt of the document on that date. Service by both parties was improper due to timelines and only serving one respondent, however all parties wished to waive service and proceed with the hearing. In accordance with the *Residential Tenancies Act, 2018* this is allowable.
6. There is a written fixed term rental agreement which commenced on 21-October-2024 whereby the tenants reside on the main level of the unit and the landlord's son resides in the downstairs unit. Rent is \$2850.00 per month, due on the first day of each month. A security deposit of \$1500.00 was paid in November 2024 and is in the landlord's possession.

Issues before the Tribunal

7. The tenants are seeking:
 - Validity of the termination notice
8. The landlords are seeking:
 - Vacant possession of the rented 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*. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Validity of the termination notice

Vacant Possession of the Rented Premises

Relevant Submission

10. Both the tenants and the landlords submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (TT#1). The notice was issued to the tenants on 25-October-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 31-October-2024.

Landlord's Position

11. The landlords testified that the tenants have been loud and disruptive since the commencement of the tenancy, and landlord 1 stated that the tenants are interfering with the peaceful enjoyment of the tenant who resides in the downstairs unit. Landlord 1 testified that the tenants moved into the unit on 21-October-2024 and she stated that there have been continuous disturbances to the downstairs tenant in the form of screaming and shouting due to arguments and fighting between both tenants in the upstairs unit. Landlord 1 testified that there was an incident reported to them which occurred on 23-October at 6:00 am whereby the tenants upstairs had a fight and there was screaming and shouting which interfered with the peaceful enjoyment of the downstairs tenant. Landlord 1 testified that she heard from the downstairs tenant again that evening regarding another incident at approximately 7:30 pm which involved loud noises due to arguing and fighting. Landlord 1 testified that the arguing continued into the following day on 24-October at which time the tenant downstairs audiotaped the upstairs tenants which captured the sounds of them screaming at each other. The landlords submitted a copy of the audio to support the claim (LL#1). Landlord 1 testified that on 25-October they gave the upstairs tenants a 5-day eviction notice under Section 24 of the Act, and they wish to have the tenants vacate the premises.

Tenant's Position

12. The tenants did not dispute that they had some disagreements which led to arguments, however they did dispute that their arguments were extreme enough to be disruptive to the downstairs tenant and they disputed that they have caused any disturbances that would interfere with the peaceful enjoyment of the downstairs tenant. The tenants testified that there has been loud noise coming from the downstairs unit, fighting, young girls screaming and a *Police* presence which has all contributed to their level of agitation. Tenant 1 testified that her and her partner may argue at times as most couples do, but it is not anywhere as disruptive as the noise that they have to listen to coming from the downstairs unit. The tenants testified that they were never made aware that their voices were heard in the downstairs unit until they received an eviction notice on 25-October and tenant 1 stated that the landlords should have contacted them with their concerns and allowed them an opportunity to work on a resolution.

Analysis

13. Statutory conditions under Section 10(7)(a) of the *Residential Tenancies Act, 2018* states:

Peaceful enjoyment and reasonable privacy

7(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.

14. The termination notice was given on 25-October-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 31-October-2024. The termination date was given not less than 5 days after the notice was served which meets the requirements as set out in the *Act*. I find that the termination notice is a valid notice from a timeline perspective but has to be further analyzed for validity (see below).
15. The landlords testified to incidents which they state they were made aware of by the downstairs tenant that interfered with his peaceful enjoyment. The landlords stated that the disturbances have been on-going since the commencement of the tenancy and continues to this day. The landlords submitted a copy of several audiotapes to show that the loud noises have been a continuous occurrence. I asked the landlords if they made the tenants aware of the situation and how it was impacting the downstairs tenant and landlord 1 responded that they did not. Landlord 1 testified that she contacted the tenants Case Worker from [REDACTED] and advised him of the situation. I asked the tenants if the Case Worker communicated to them the landlord's concerns and tenant 1 responded that he did not.
16. The landlord's submitted a copy of a written email from the downstairs tenant dated 7-November-2024 which I did not accept into evidence as it was not a sworn affidavit. I suggested that the landlords call the downstairs tenant into the hearing as a witness, and they agreed. The witness was called into the hearing and when asked questions pertaining to the incidents that occurred leading up to the eviction notice on 25-October, the witness responded that he does not remember specific incidents during that time. The witness could not speak about any incidents whereby the upstairs tenants interfered with his peaceful enjoyment, nor could he recall any incidents when cross examined by the upstairs tenants. The witness did however state that often times there is screaming and sometimes it lasts 30 seconds and sometimes it goes on for the entire day, but he was unable to state any timelines. Landlord 1 explained that the witness has a medical condition which interferes with his memory and as a result the witness was asked to leave the hearing. I find that the witness was not able to collaborate the landlord's testimony.
17. The landlords submitted audio tapes into evidence which they stated were recorded by the downstairs tenant and forwarded to them, and I explained to the landlords that this tribunal has to rule on whether or not there was interference of peaceful enjoyment or reasonable privacy up to the point the termination notice was given on 25-October. I accept that the upstairs tenants may be loud at times and have been arguing, which is heard in the downstairs unit, however given that the landlords did not address the issue directly with the new tenants and given that the termination notice was issued 4 days after the tenancy commenced, I can only take into consideration the events that transpired from 21-October to 25-October. During that time, there were 3 disturbances reported to the landlords and 1 audio which reveals that there were loud noises coming from the upstairs unit but certainly nothing extreme.

18. The tenants did not dispute that they speak loud and tenant 1 testified that tenant 2 has a tube in his throat which alters his voice making it louder than normal. I asked the tenants about the incident which occurred on the morning of 23-October, and tenant 1 responded that they did not disturb the tenant downstairs on that date but rather it was the tenant downstairs who woke them out of their sleep at 4:19am playing the bass instrument and people were coming and going from the downstairs unit. Tenant 1 stated that they were frustrated that morning and may have become loud as a result of the downstairs tenant's actions. Tenant 1 testified that she stomped on the floor in hopes that the downstairs tenant would stop the loud music. I asked the tenants about the incident later that night approximately 7:30pm and tenant 1 testified that the loud music started again from the downstairs unit which resulted in a feeling of frustration for her and her partner. I asked the tenants about the incident on 24-October at approximately 9:30pm and tenant 1 testified that tenant 2 was out of medications and was feeling frustrated and as a result their conversation was loud.

19. I asked the landlords if they wish to make a closing statement and landlord 1 stated that the loud noise from the upstairs tenants is on-going and has been a consistent pattern and if the tenants did not know that they were disturbing the tenant downstairs at the end of October, then they knew it after that time and the tenants have made no effort to change their behaviour. I asked the tenants if they wish to make a closing statement and tenant 1 stated that the loud noise from the tenant downstairs continues with the bass instrument and there is an on-going *Police* presence which makes them uncomfortable and adds to their feelings of agitation. Tenant 1 stated that the landlords should have reached out to them and made an effort to resolve the problem and she also stated that there is a good relationship between her, her partner and the downstairs tenant as they were cordial and shook hands just last week.

20. In accordance with Section 10(7) (a) of the *Act* as stated above, the landlords had to show that the tenants unreasonably interfered with the peaceful enjoyment and reasonable privacy of the downstairs tenant which would warrant giving a 5-day eviction notice. As determined earlier, the downstairs tenant was not able to collaborate the landlords testimony, and the landlords did not address the issue with the tenants prior to giving the eviction notice on 25-October. The onus was on the landlord to show that they had a right to give a 5-day eviction notice and I find that the landlord's failed to do so.

21. I find that the landlords failed to show that the tenants **unreasonably** interfered with the rights and reasonable privacy of the tenant downstairs up to the point the eviction notice was given on 25-October-2024.

Decision

22. I find that the termination notice given on 25-October-2024 is not a valid notice.

23. The landlord's claim for *vacant possession of the rented premises* does not succeed.

December 20, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office