

Residential Tenancies Tribunal

Application 2024-1165-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:48 p.m. on 27-January-2025.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, attended by teleconference.
4. [REDACTED], witness for the landlord was called into the hearing.

Preliminary Matters

5. The landlord submitted an affidavit with her application stating that she had served the tenant with the notice of hearing electronically by email to; [REDACTED] on 16-January-2025 (LL#1). The tenant denied receiving the document. The landlord submitted proof of email address and proof of sent email (LL#2). In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a written month-to-month rental agreement which commenced on 16-August-2024. The respondent rents an apartment in a 3-apartment unit. Rent is \$900.00 per month, due on the first day of each month. A security deposit of \$450.00 was paid on 9-June-2024.

Issues before the Tribunal

7. The landlord is seeking:
 - An order for vacant possession of the rented premises
 - Hearing expenses \$20.00

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*.

9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory Conditions and Section 24; Notice where tenant contravenes peaceful enjoyment and reasonable privacy.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submission

10. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#3). The notice was issued to the tenant on 25-November-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 4-December-2024.

Landlord's Position

11. The landlord testified that the tenant is interfering with the peaceful enjoyment and reasonable privacy of the other tenants residing in the unit and she testified that the tenant is also interfering with her rights as a landlord to have her agent oversee renovations at the unit. The landlord testified that the tenant has been difficult and has been threatening towards her, her workers and the other tenants in the unit. The landlord stated that the tenant has been disruptive and hard to deal with, he talks behind their backs and makes people feel uncomfortable. The landlord provided witness affidavits from her agent and one of her tenants who works for her at the unit to support her claim (LL#4). The landlord called this tenant as a witness into the hearing as he not only works for her renovating the unit, but he also resides in the unit as a tenant. The witness testified that the tenant is annoying to him while trying to get work done around the unit and he stated that he has had words with the tenant, and he tries to avoid him at all costs. The witness stated that the panel box for all 3 units is located inside the tenant's apartment, and he testified that the tenant has turned off the breakers to the other units on at least 3 occasions interfering with the landlord's right to complete the renovations at the unit. The witness also stated that sometime back in November he was directed by the landlord to stop working on the renovations at the unit which lasted for approximately 1 ½ hours that day due to the tenant's threatening behavior towards the landlord.

Tenant's Position

12. The tenant disputed that he ever interfered with the peaceful enjoyment or reasonable privacy of the other tenants in the unit, and he disputed ever interfering with the rights of the landlord. The tenant disputed ever turning of the breakers to the panel box and stated that the breakers would pop, and he would turn them back on. The tenant stated that the landlord is trying to force him out of his unit as he has complained about the condition of the unit and how it doesn't meet his needs as a disabled person.

Analysis

1. Section 24 of the *Residential Tenancies Act, 2018* 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 specific date not less than 5 days after the notice has been served.

2. The relevant subsections of Section 10 of the *Residential Tenancies Act, 2018* states:

Statutory Conditions

10.(1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of the landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

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.
13. The termination notice was given on 26-November-2024 under Section 24: *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 4-December-2024. I asked the landlord how the termination notice was given, and she responded that she attempted to have the notice served personally at the residential premises on 25-November at which time the tenant rejected receipt of the notice and she stated that she then proceeded to serve the notice electronically via email on 26-November. 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).
14. I accept the landlord's testimony that the tenant can be difficult, and I asked her to provide dates and times of incidents that occurred whereby she felt threatened or whereby her rights as a landlord had been contravened and she was unable to do so. I also asked her for dates and times when her other tenants have felt like their peaceful enjoyment and reasonable privacy was interfered with and again, she was unable to provide them. I asked the witness if the tenant had ever visited his unit or engaged him in the common space outside the premises and he responded that the tenant has never really interfered with his rights as a tenant but because of his behaviour towards him as a worker of the landlord, he felt uncomfortable around him and used the back walkway to avoid him. The landlord failed to show that the tenant was responsible for turning of the breakers on the panel box. I accept that the landlord had to stop work on the unit for 1 ½ hours one day in November due to the tenant's behaviour but the landlord failed to show how and why she arrived at that decision.
15. I find that the landlord's case was weak, and she failed to substantiate her claims against the tenant. I find that the affidavits on file did not support her claims either. This tribunal has an obligation to ensure that the *Act* is contravened before removing tenants from their homes with little notice. In accordance with Section 10(7) (a) of the *Act* as stated above, I find that the landlord failed to show that the tenant **unreasonably** interfered with the rights and reasonable privacy of the other tenants who reside within the residential premises. I also find that the landlord failed to show that the tenant interfered with her rights as a landlord. I find that the termination notice given on 26-November-2024 is not a valid notice.

Decision

16. The landlord's claim for *vacant possession* does not succeed.

Issue # 2: Hearing expenses \$20.00

17. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (LL#5). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees can be claimable costs. As the landlord's claim for vacant possession does not succeed, I find that the tenant is not responsible for the landlord's hearing expenses.

Decision

18. The landlord's claim for *hearing expenses* does not succeed.

Summary of Decision

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

20. The landlord's claim for *hearing expenses* does not succeed.

January 30, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office