

Residential Tenancies Tribunal

Application 2024-1201-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:45 a.m. on 6-February-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", attended the hearing.
3. The respondent, [REDACTED], hereinafter referred to as "the tenant", attended the hearing.

Preliminary Matters

4. The landlord submitted an affidavit, stating that she had served the tenant with the notice of hearing personally at the residential premises and electronically via text message on 24-January-2025 (LL#1). The tenant confirmed receiving the notice of the hearing on that date. This is good service, and the hearing proceeded.
5. There is a written month to month rental agreement which commenced on 1-November-2024, when the landlord purchased the property, however the tenant has been in the unit since September-2019. The landlord lives in the upstairs apartment and the tenant lives in a basement apartment. Rent is \$1000.00 per month, due on the first of each month. A security deposit of \$500.00 was collected in the beginning of the tenancy and is in landlord's possession.
6. The landlord amended her application to include hearing expenses of \$20.00.

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 24: Notice where tenant contravenes peaceful enjoyment and reasonable privacy and Section 34: requirements for notices, and the following sections of the *Residential Tenancy Policy Manual*: Section 7-5: Interference with peaceful enjoyment and reasonable privacy and Section 12-1: Recovery of Costs.

Issue # 1: Vacant Possession of the Rented Premises

Relevant Submissions

10. The landlord submitted a copy of a termination notice that was given on a *Landlord's Notice to Terminate Early – Cause* form (LL#2). The notice was issued to the tenant electronically via text message on 16-December-2024 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 22-December-2024.

Landlord's Position

11. The landlord testified that the tenant has interfered with her peaceful enjoyment and reasonable privacy. The landlord stated that the tenant repeatedly contacted her at inappropriate hours, both during the day and at night, causing a disturbance. The landlord stated that after the first occurrence in the mid-November, she had a conversation with the tenant, advising him to refrain from calling outside of emergencies and to use her phone number only for urgent matters. The tenant assured her that he would comply, however, the behavior continued.
12. The landlord reported that the tenant repeatedly called her during the night and early morning hours, leaving inappropriate harmful voicemail messages during November, December and January. Additionally, the landlord stated that these actions have interfered with her peaceful enjoyment of the property, causing her significant stress and that she felt unsafe in her own unit.
13. The landlord is seeking an order of vacant possession.

Tenant's Position

14. The tenant stated he did not receive the termination notice. The tenant testified that he was experiencing severe anxiety attacks and was confused about the situation. He stated that he had no intention of upsetting anyone and that he often forgot what had occurred before.

Analysis

15. Section 24 of the *Residential tenancies Act* 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 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.

16. Section 34 of the *Residential tenancies Act* states:

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.

17. The tenant disputed receiving termination notice, however the landlord provided evidence showing that a text message containing the notice was sent to the tenant (LL#3) and confirmed that she had previously used the same phone number for correspondence with the tenant. For those reasons I find that the termination notice given on 16-December under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 22-December-2024, was served according to the Section 34 of the Act as stated above. The termination date was given not less than 5 days after the notice was served and meets the requirements of the *Act* as stated above. I find that the termination notice is a valid notice from a timeline perspective and technical requirements but has to be further analyzed for validity (see below).

18. According to the Section 7-5 of the *Residential Tenancies Policy Manual*, unreasonable disturbances interfering with peaceful enjoyment and reasonable privacy may include but is not limited to the following: excessive noise, aggressive or obnoxious behaviour, threats and harassment. I accept the landlord's testimony that that she was repeatedly disturbed by the tenant's calls at inappropriate hours. The landlord provided screenshots of significant number of missed calls (LL#4), demonstrating that the tenant contacted her during night hours. Given this evidence, I find that the tenant's behavior was inappropriate and interfered with the landlord's peaceful enjoyment of the property and reasonable privacy.

19. I accept that these ongoing issues were the reasons the landlord felt unsafe in her own unit. For those reasons, I find that the termination notice given on 16-December-2024 under the Section 24 of the *Act* is a valid notice.

20. I find that the tenant should have vacated the unit on 22-December-2024.

Decision

21. The landlord's claim for an Order of vacant possession succeeds.

Issue # 2: Hearing expenses \$20.00

Analysis

22. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

23. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

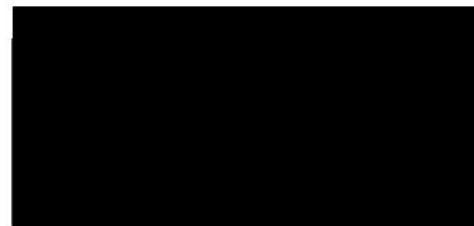
Summary of Decision

24. The landlord shall retain \$20.00 from the security deposit to cover *hearing expenses*.

25. The tenant shall vacate the premises immediately.

26. 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.

27. The landlord will be awarded an Order of Possession.



February 17, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office