

Residential Tenancies Tribunal

Application 2025-0125-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:57 p.m. on 27-February-2025.
2. The applicant, [REDACTED] represented by [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “the tenants”, did not attend.
4. [REDACTED] was called into the hearing as a witness.

Preliminary Matters

5. The tenants were not present or represented at the hearing and when I reached them by telephone, respondent 1 explained their unwillingness to participate in 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 the 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 they have been properly served. The landlords submitted two affidavits with their application stating that they have served the tenants with the notice of the hearing via prepaid registered mail, tracking numbers [REDACTED] and [REDACTED] on 11-February-2025 (LL#1,2). In accordance with the *Residential Tenancies Act, 2018* this is good service. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
6. There is a written fixed term rental agreement which commenced on 1-December-2024 for one year. Rent is \$1200.00 per month, due on the first of each month. A security deposit of \$800.00 was collected on 1-December-2024 and is in landlord’s possession.
7. The landlords amended their application to include hearing expenses of \$119.69.

Issues before the Tribunal

8. The landlord is seeking:

- Validity of Termination Notice;
- An Order for vacant possession of the rented premises;
- Hearing expenses \$119.69.

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*.

10. 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

11. The landlords 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 tenants personally at the residential premises and via mail on 29-January-2025 under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 6-February-2025.

Landlord's Position

12. The landlords testified that they received multiple complaints from other tenants in the multi-apartment building regarding the tenants in question. The complaints included allegations of excessive insults, the smell of smoke, loud noises during late hours, aggressive behavior, and rude and abusive conduct. The landlords stated that the tenants had been verbally abusive toward other residents and interfered with their peaceful enjoyment and reasonable privacy. The landlords' submitted video statements of other tenants to support their claim (LL#4).

13. The landlords stated that when they communicated the concerns to the tenants, and they responded with verbal abuse and harassment, including inappropriate and racist remarks. The landlords submitted video evidence to support their claim (LL#5). Despite attempts to communicate their concerns, the landlords stated that the tenants remained aggressive and continued to verbally abuse them.

14. The landlords are seeking an order of vacant possession.

15. The landlords requested to call a witness.

Witness Statement

16. The witness stated that he resides in the downstairs unit directly below the tenants in question. He reported experiencing numerous disturbances, including loud noises during night hours, banging on the floor, and disruptive behavior, particularly during nighttime

hours. He recalled specific incidents on January 18, 19, 25, 29, and 30, as well as February 15.

17. The witness stated that the noises included loud banging on the floors, which disrupted his sleep. He also alleged that the tenants appeared to be under the influence of substances and experiencing hallucinations. He stated that he was unable to sleep on multiple occasions, which caused him to miss work. Furthermore, he stated that his elderly mother, who also resides in the unit, expressed concerns about their well-being, as this situation causing her significant stress, and they felt unsafe in their own unit.
18. The witness also reported that smoke was coming from the tenants' unit and that they were verbally abusive toward him and his mother and other tenants. He personally witnessed the tenants verbally abusing the landlords. The witness described the tenants' behavior as dysfunctional and disruptive. As long-term tenants residing in the unit for 18 years, he and his mother felt their living situation had become intolerable. The witness expressed that they would consider vacating the premises if the tenants were not removed, as the situation had escalated to the point where police were involved.

Analysis

19. 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.

20. 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.

21. I accept the landlords' testimonies, indicating that the tenants were properly served with a termination notice and had previously been warned that such behavior was unacceptable, as the tenants were not present or represented during the hearing to provide their own testimonies. For those reasons I find that the termination notice given on 29-January-2025

under Section 24; *Notice where tenant contravenes peaceful enjoyment and reasonable privacy* to vacate on 6-February-2025, 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).

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 witness's statement, as well as the landlords' acknowledgment that issues with the tenants' dysfunctional behavior were ongoing. I also accept the testimonies of both the landlords and the witness that the tenants engaged harassment and made threats against other tenants, as well as the landlord. I also accept that the tenants' conduct during nighttime hours, inclusive of excessive noise, was inappropriate. Based on the evidence presented, I find that the tenants interfered with peaceful enjoyment and reasonable privacy of other tenants.

22. Given the repeated disturbances and complaints, I find that the termination notice is valid, and the tenants should have vacated the unit on 6-February-2025.

Decision

23. The termination notice is a valid notice. The landlords' claim for an Order of vacant possession succeeds.

Issue # 2: Hearing expenses \$119.69.

Relevant Submission

24. The landlords paid \$20.00 for the application fee (LL#6), and \$39.69 for prepaid registered mail (LL#7), and \$60.00 for service of Commissioner for Oaths (LL#8) and are seeking reimbursement.

Analysis

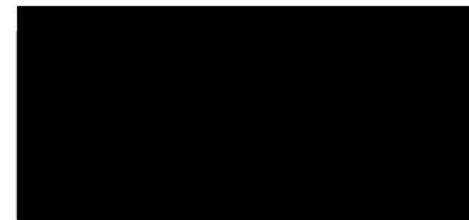
25. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee and registered mail expenses and other cost incurred in the preparation for a hearing. I accept, that the landlords provided proofs for application fee and registered mail expenses, however, as the landlords' submitted proof of a \$40.00 expense for the Commissioner for Oaths service, I find that they are entitled to reimbursement in this amount, as supported by the receipt provided. As the landlords' claim has been successful, the tenants shall pay the hearing expenses.

Decision

26. The landlords' claim for hearing expenses succeeds in the amount of \$99.69.

Summary of Decision

27. The landlords shall retain \$99.69 from the security deposit to cover *hearing expenses*.
28. The tenants shall vacate the premises immediately.
29. The tenants shall pay to the landlords 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.
30. The landlords will be awarded an Order of Possession.



March 6, 2025

Date

Oksana Tkachuk, Adjudicator
Residential Tenancies Office